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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties

ANDORRA

[27 July 2000]

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I. GENERAL INFORMATION

A. Land and people

1. Geographical situation

1. A small State with an area of 468 square kilometres between France and Spain, the Principality of Andorra is situated between the borders of these two neighbouring countries and forms part of the greater Pyrenean transborder zone. The geopolitics of Andorra make it a linchpin of the region, and this shapes the essential character of the country.

2. Both traditional ways of life, based on livestock and transhumance, as well as contemporary ways of life based on the service sector, involve transborder relationships and cooperation.

3. Over time, livestock raising, originally based on an extensive system of agriculture, has gradually given way to the service sector, characteristic of developed economies, with retailing and tourism predominating.

4. This social and economic transformation has required change by institutions in response to contemporary needs.

5. The Constitution of the Principality of Andorra, approved by referendum on 14 March 1993, represents the culmination of this process of institutional change.

2. Ethnic and demographic characteristics

6. In 1997 Andorra had a population of 65,306 inhabitants, following a 12-fold increase in population over the second half of the twentieth century. This significant increase is the result of immigration and not internal growth. The country has, in effect, served as a labour market, to such an extent that its own nationals have become a distinct minority.

7. The economy has undergone fundamental change, and the population, mirroring economic trends, has reflected these changes. Demographic trends, characterized by emigration in the early decades of the twentieth century, have been reversed, and new cultures, unlike the native culture, have appeared on Andorran territory.

8. The first and only full census of the population was conducted in 1989. Study of the population, however, involves looking beyond the official sources available, as data have been collected for the purposes of administration in a way that has not always been based on relevant scientific criteria. The comuns (local authorities) are responsible for maintaining the population register and for transmitting information to the Ministry of the Presidency and the Interior. The criterion used is de jure residence, in other words registration in the comú.

9. The servei d'ordre (former name of the police force) carried out the first of a series of surveys in 1947. To estimate the population before that date, reference must be made to earlier records providing demographic data from the nineteenth century and the early decades of the twentieth century, data which are sometimes contradictory.

10. Since 1977 the authorities have issued the Population Statistics Bulletin, which, each year, gives basic information on the population of the country, namely, distribution by parish and by age bracket (by sex and by nationality), number of births and deaths (by sex and by age) and number of marriages. The data do not include labour statistics.

11. The Bulletin, now published by the Ministry of the Interior, is based on data obtained from the comuns. Until recently, information on births, marriages and deaths was provided by priests. Parish priests, who had always had responsibility for the church register, in the absence of a civil register gradually assumed this function as attitudes changed. In February 1997, a civil register as such was first established for the registering of births in the country and of births of Andorran citizens abroad, as well as of deaths and civil marriages.

12. Statistics on the working population and labour relations come from the Andorran Social Security Fund (CASS), the sole source for such information, with the inevitable limitations and errors since the primary function of CASS is not to issue population statistics.

13. The most recent statistics issued by the Ministry of the Interior, dating from 1997, indicate a birth rate of 11.18 per cent and a total population of 65,306 inhabitants. The mortality rate was 3.09 per cent. Ministry of Health and Welfare data indicate that over the period 1992-1996 there were 901 deaths of residents of the Principality, representing a crude mortality rate of 2.8 per cent. Natural growth (8.16 per cent in 1997) is high because of the decline in the mortality rate.

14. The Ministry of Health and Welfare provides the infant mortality rate (number of deaths of children under one year of age per thousand live births) on the basis of death certificates: the 1997 percentage was zero. That is a very low value, but the small statistical base means that account must be taken of rates in other years.

15. The ratio of boys to girls is 117 to 100, higher than in Catalonia. In absolute terms, 393 boys were born in 1997 against 337 girls.

16. The fertility rate (number of births per thousand women aged 15 to 49) is 40 per cent. The boys/girls ratio is an alternative indication of the fertility rate. Calculated by dividing the total number of boys and girls aged 0 to 4 years by the number of women aged 15 to 49, the result is 18.2. The marriage rate is only 2.2 per cent, but it should be noted that only Andorrans are required to record marriages in the civil register.

17. The high immigration rate has been one of the salient characteristics of the population of Andorra, and represents a key factor in demographic growth and economic development. Although births have outnumbered deaths over the past 12 years, the two trends are stable.

Migration, in contrast, has experienced significant variation, although the net flow has generally been positive, with year-on-year fluctuations as a result of cyclical, economic and political factors.

18. The outlook for demographic growth in Andorra depends as much on the behaviour of the population in response to an economy centred around tourism and the service sector as on government immigration policy. The current legal framework governing immigration - the immigration decree of 26 June 1980, amended by the law of 25 April 1984 - is about to be replaced by a new law. The draft bill abandons the quota system, proposed by the Government and approved by Parliament, in favour of a free labour market.

19. The arrival in the country of foreign workers has modified the population structure, making the pyramid into a bulb shape, with a central bulge on a very narrow base and a tapered top. The population is heavily concentrated in the 25-40 age bracket; the average age of the national population is 36.

20. The pyramid displays three well-differentiated groups: children under 15 years of age (10,002 - i.e. 15.3 per cent of the population); persons from 15 to 64 years of age (47,789 - i.e. 73.2 per cent of the population); and those over 65 years of age (7,515 - i.e. 11.5 per cent of the population).

21. The ageing rate, that is the number of persons aged 65 or older for each 100 persons under 15, is 75.1. The Catalan figure is 106. There is a trend towards ageing in comparison with other countries, although less so than in Catalonia.

22. In 1997 there were 34,281 men and 31,025 women, with 110.5 men per 100 women, that is 52.5 per cent male and 47.5 per cent female. The European trend is towards equality of the sexes, and Andorra seems to be following that trend. Previously, there was a higher ratio of males (114:100 in 1993). The predominance of men in the population is one of the salient characteristics of the country, with a clearly differentiated immigration structure in which male labour predominates especially in sectors such as construction.

23. Nationality is one component of demographic structure. From this standpoint Andorra is a mosaic, offering a model unique in the European context. Of the population, 32.3 per cent is Andorran, born in Andorra, and 67.7 per cent consists of foreigners. Spaniards occupy first place, with 43.7 per cent; Andorrans are in second place, with 32.3 per cent; Portuguese are in third place, with 10.7 per cent; and the French, with 6.77 per cent, have been relegated to fourth place by the Portuguese. Other nationalities represent 6.5 per cent of the population of the Principality.

24. Laws governing nationality, adopted in 1993 and in 1995, have had an impact on population dynamics. The llei qualificada de la nacionalitat (law on nationality appearing in the Official Bulletin of the Principality of Andorra on 28 September 1993) again confers nationality on children born to foreigners in Andorra, who, since 1975, had ceased to be regarded as Andorran nationals.

3. Standard of living

25. In 1998 the Survey Office of the Ministry of Finance published the results of a survey of households for the period 15 June 1996-15 June 1997 containing data relating to housing, household fixtures, fittings and major appliances, and members of each household.

26. In 1997 per capita GDP was estimated at 3,208,776 pesetas, i.e. US$ 21,916.

B. Political structure

27. The institutions of the Principality of Andorra were structured and developed on the basis of the Pareatges (joint suzerainty agreements) of 1278 and 1288 and the creation, in 1419, of the Consell de la Terra (Land Council). The principles stemming from this have allowed the erection of a stable political framework, within which the concept of the separation of powers has been progressively developed, firstly through the decree on institutional reform of 15 January 1981 (establishment of the Executive Council or Government of Andorra), and then by the Constitution, adopted by the Andorran people in a referendum on 4 May 1993.

28. Other aspects of the political system, such as national sovereignty, fundamental individual rights and public freedoms, the functioning of institutions and the territorial division of the country, are the subject of special regulation in the Constitution so as to reconcile the demands of a contemporary State governed by the rule of law with respect for and promotion of the national identity and tradition.

29. Andorra's political regime is that of a parliamentary co-principality. The co-princes are, jointly and indivisibly, the Head of State, of which they constitute the highest embodiment. They are both the symbol and guarantors of the permanence of Andorra and of its independence as well as of the maintenance of the traditional spirit of parity and equilibrium in relations with the neighbouring States.

30. The co-princes are the arbiters and moderators of the functioning of the public authorities and institutions and are kept regularly informed of State affairs. The other functions of the co-princes are the convening of general elections and calling of referendums, the appointment of the Cap de Govern (Head of Government) and heads of other State institutions, and the approval and promulgation of laws.

1. The Consell General (Andorran Parliament)

31. The Consell General represents the Andorran people. It exercises legislative authority, approves the State budget, and initiates and oversees government political initiatives. The consellers generals (deputies) are elected by free, equal, direct and secret universal suffrage for a term of four years. Their mandate ends on completion of the term or on dissolution of the Consell General.

32. The Consell General comprises a minimum of 28 and a maximum of 42 consellers generals, half being elected by each of the seven parishes on an equal basis and half on a national basis. The elected councillors appoint the Síndic General (President) and the Subsíndic General (Vice-President), who constitute the Sindicatura or executive organ of the Consell General.

33. When a law is adopted by the Consell General, the Síndic General transmits it to the co-princes for approval, promulgation and publication in the Official Bulletin within one to two weeks.

2. Government

34. The Government comprises the Cap de Govern (Prime Minister) and ministers, the number of whom is established by law. Under the authority of the Cap de Govern, the Government directs the national and international policy of Andorra. It also directs the administration of the State and exercises regulatory authority.

35. The public administration serves the general interest and acts objectively in full accordance with the Constitution, laws and general principles of order as defined under title I of the Constitution. Its decisions are subject to judicial review. The Cap de Govern is elected by the Consell General, then appointed by the co-princes, in accordance with the provisions of the Constitution.

3. The comuns

36. The Principality of Andorra has seven territorial divisions called "parishes", administered by the comuns (town halls): Canillo, Encamp, Ordino, La Massana, Andorra la Vella, Saint Julià de Lòria and Escaldes-Engordany.

37. The comuns, as bodies that represent and administer the parishes, are public authorities with legal status and with local regulatory powers, subject to the law, by means of ordinances, regulations and decrees. Within their authority, which they exercise subject to the Constitution, legislation and tradition, the comuns function in accordance with the principle of self-government, recognized and guaranteed by the Constitution.

38. The comú represents the interests of the parish, approves and implements the parish budget, determines and implements within its territory administrative policy subject to its authority, and administers and regulates all property, both public and private, in the parish.

39. Electors in the parishes elect from 10 to 16 consellers de comú (councillors) for terms of four years, who, after being sworn in, elect the cònsol major (mayor) and the cònsol menor (deputy mayor). Half of the councillors in the comuns are from the list receiving the most votes in the elections, and the other half from all the lists, including that which attracted the most votes, on the basis of proportional representation.

40. Conflicts of competence between State bodies and the comuns are adjudicated by the Tribunal Constitucional (Constitutional Tribunal).

41. Decisions by the comuns are directly enforceable under the conditions established by law. They are subject to administrative and judicial appeal to ensure their conformity with the legal order.

42. The comuns have the authority to initiate legislation. Three comuns can jointly submit a bill to the Consell General. They have the right to appeal on the ground of unconstitutionality under the conditions established by the Constitution and by the llei qualificada of the Tribunal Constitucional (a llei qualificada is a law requiring a bigger majority for approval).

4. Justice

43. Justice is rendered, in the name of the Andorran people, by batlles (lower-court judges) and independent judges holding office for life, subject only to the Constitution and the law.[1]

44. The Consell Superior de la Justícia (Supreme Council of Justice) is the institutional body representing judicial authority: it has five members appointed for a term of six years who may not be appointed to more than two consecutive terms. They are appointed as follows: one by each of the co-princes, one by the Síndic General, one by the Cap de Govern and one by the judges and the batlles. The Consell Superior de la Justícia appoints the batlles and judges, exercises disciplinary authority over them and ensures the independence and proper functioning of the judicial system, but does not itself exercise judicial functions.[2] The Council also appoints government ministers on a government proposal.[3]

45. The courts are structured in three branches: civil, criminal and administrative. Each has two levels: first instance and appeals

46. The Batllia is the judicial authority of first instance in civil and administrative cases. In criminal cases, it is the organ responsible for the judicial investigation and judges in first instance minor offences and petty criminal offences, respecting the principle of separation of investigation and proceedings. The Batllia comprises at least eight batlles and its president, who sits either as a single person tribunal or as member of a panel (Tribunal de Batlles), depending on the circumstances.[4]

47. The Tribunal de Corts is the judicial organ of first instance for serious offences, as well as the appeals court for criminal judgements handed down by the Batllia in first instance. It consists of a president, a vice-president and a judge, and decisions are collegial, taken by majority voting.[5]

48. The Tribunal Superior de Justícia (Supreme Court of Justice) is the highest authority in the Andorran judicial system. It is competent to act as a court of second and third instance in civil and administrative cases and, in criminal matters, to hear cases involving serious offences referred by the Tribunal de Batlles. It comprises a president and eight judges, divided between three chambers.[6]

49. Although closely linked to the courts, the Public Prosecutor's Office is not part of the system of administration of justice. Its role is to represent the State before the court, act on behalf of the State in criminal cases, and ensure respect for fundamental rights and public freedoms.[7] Specifically, it acts in proceedings relating to constitutional protection (remedy of empara).

50. The Tribunal Constitucional is responsible for maintaining and interpreting the Constitution. It has four judges: one appointed by each of the co-princes and two by the Consell General. It hears appeals on the unconstitutionality of laws, and requests for preliminary opinions on the constitutionality of laws and international treaties, and conducts proceedings relating to constitutional protection (remedy of empara). Only the highest organs of the State may appear before the Tribunal Constitucional, other than in cases of constitutional protection in connection with the violation of fundamental rights.[8]

C. Legal framework for the protection of human rights in the Principality of Andorra

1. Judicial and administrative authorities with competence in the field of human rights

51. The Constitution of the Principality of Andorra provides that "the rights and freedoms recognized in chapters III and IV are immediately binding on the public authorities and are directly enforceable. Their scope cannot be limited by law and is protected by the courts".[9]

52. Chapters III and IV of title II of the Constitution establish the fundamental rights of the individual and enunciate public freedoms, namely: right to life,[10] right to physical and moral integrity,[11] prohibition of the death penalty,[12] right to liberty and security,[13] right to trial before a court,[14] right to counsel and the assistance of a lawyer, right to trial within a reasonable time, right to the presumption of innocence, to be informed of the charges, not to declare oneself guilty, not to testify against oneself and to appeal in criminal cases,[15] freedom of thought, religion and worship,[16] freedom of expression, communication and information,[17] right to privacy, honour and reputation,[18] guarantee of the inviolability of the home and of privacy of communication,[19] right to meet and assemble for any lawful purpose,[20] right of association,[21] right to form and maintain professional, employers' and trade union associations,[22] right of workers and employers to defend their economic and social interests,[23] right to education[24] and the establishment of educational institutions,[25] right to choose the type of education for one's children,[26] right to move freely throughout the national territory and to enter and leave the country,[27] right to petition the public authorities,[28] right of suffrage,[29] right of equal access to public service and office,[30] and right freely to create political parties.[31]

53. Article 3 (1) of the Constitution provides that it "is binding on all public authorities and individuals". All the fundamental rights enunciated under title II are thus directly enforceable and are binding on the public authorities, whether they exercise legislative, executive or judicial functions or are subject to such functions (bearing in mind the direct enforceability of these rights). Respect for and protection of the fundamental rights of the individual can thus be demanded of the public authorities.

54. Judicial protection of fundamental rights is entrusted to the ordinary courts through special proceedings[32] for the protection of the rights and freedoms recognized under chapters III and IV of title II of the Constitution.

55. Similarly, article 41 (2) of the Constitution provides for the protection of fundamental rights through special proceedings before the Tribunal Constitucional (remedy of empara), with the exception of the case provided for in article 22. The Public Prosecutor's Office may, on appeal, request the protection of the Tribunal Constitucional against acts by public authorities that impair fundamental rights.[33] As for an appeal requesting the protection of the Tribunal Constitucional, the llei qualificada governing the Tribunal provides, in article 92 (2), that this "supposes setting aside the decision appealed against and all its effects, acknowledgement of having infringed a constitutional right and restitution in full to the appellant of his or her rights through the adoption of the necessary measures for that purpose. If the injury to the right is materially irreparable, the Tribunal shall determine the nature of the responsibility incurred by the party responsible for the violation of the right, so as to appeal in the ordinary courts".

56. In addition, the Principality of Andorra, which is a member of the Council of Europe, has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) together with Protocols Nos. 6 and 11 to the Convention. By so doing the State of Andorra has adopted all the human rights guarantees established under these international instruments.

57. Only amendment or reform of the Constitution permits derogation from a fundamental right recognized by it.[34]

58. Quite exceptionally and in strictly regulated circumstances, limitation of the exercise of certain fundamental rights can be authorized only under the conditions stipulated in article 42 of the Constitution:

> "1. A llei qualificada shall regulate states of alert and states of emergency. The former may be declared by the Govern in case of natural disasters, for a period of 15 days, with notification of the Consell General. The latter may also be declared by the Govern, for a period of 30 days, in the event of the interruption of the normal functioning of democratic life, with the prior authorization of the Consell General. Any extension of these provisions necessarily requires the approval of the Consell General.
>
> "2. Under a state of alert, exercise of the rights recognized in articles 21 and 27 may be limited. Under a state of emergency, the rights covered by articles 9 (2), 12, 15, 16, 19 and 21 may be suspended. The application of such suspension to the rights contained in articles 9 (2) and 15 is subject to judicial review, notwithstanding the procedure for protection established in article 9 (3)".

59. Article 3 (4) of the Constitution stipulates that treaties and international agreements take effect in the legal system once they have been published in the Butlleti Oficial del Principat d'Andorra, and cannot be amended or repealed by law.

60. Article 64 (1) (d) of the Constitution states that treaties affecting the fundamental rights of the individual regulated under title II must be approved by an absolute majority of the Consell General.

61. In accordance with article 3 of the Constitution, once international treaties and agreements are duly ratified and published in the Butlleti Oficial del Principat d'Andorra, they have binding effect in the Andorran legal system. Similarly, their content cannot be amended by law and thus becomes, on incorporation into the Andorran legal system, law enforceable by the system of administration of justice.

62. In addition to the general and specific legal appeals for the protection of fundamental rights for which there is provision, the Andorran parliament has recently adopted a law on the creation and functioning of the post of Raonador del Ciutadà,[39] based on the Swedish and French ombudsmen, as an extrajudicial guarantee, conceived of as a counselling and mediation service. Its preamble provides as follows:

> "Although the Constitution of the Principality makes no specific provision for an institutional figure devoted to the defence of the fundamental rights and freedoms of the citizen, that does not prevent such a position being established, by law, in our system, which action the Government took on 4 June 1998, as referred to in paragraph A (3) (6)".

63. Ordinary courts, and the Batllia, Tribunal de Corts and Tribunal Constitucional, are competent in the matter of the fundamental rights enunciated in chapters III to V of the Constitution.

2. Appeals in defence of human rights and system of compensation and rehabilitation of victims

64. Appeals against human rights violations are governed by the first section of chapter II of the transitional law on judicial procedure defining the unlawful detention procedure referred to in article 9 (3) of the Constitution and the second section relating to the procedure in the event of violation of the rights and freedoms recognized in chapters III and IV of the Constitution.

65. Article 41 (2) of the Constitution also provides for appeal for protection before the Tribunal Constitucional in the event of violation of the rights specified in chapters II and IV of the Constitution.

3. Incorporation of human rights instruments in the national legal system

66. A 1989 law provides that the fundamental rights of the individual defined in the Universal Declaration of Human Rights form part of the legal order of the Principality. These rights have been incorporated in the domestic system of Andorra since that date, but it was not until 1993, with the approval of the Constitution, that up-to-date machinery to protect such rights was established.

67. The 1993 Constitution both establishes that the Universal Declaration of Human Rights is in force in Andorra[36] and gives an expanded and more detailed list of rights and freedoms than that contained in the Declaration. These two lists of rights form part of the domestic law of the Principality and can be immediately invoked and enforced.

68. The Constitution stipulates that international treaties affecting the fundamental rights of the individual enunciated under title II must be approved by an absolute majority of the Consell General.[37]

69. In November1995 Andorra ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as well as Protocol No. 6 to the Convention, which established the European Court of Human Rights, and Protocol No. 11, relating to abolition of the death penalty.

70. Human rights treaties and international agreements to which Andorra is party or to which it has acceded, in particular the European Convention on Human Rights, become part of the national legal order on their publication in the Butlletí Oficial del Principat d'Andorra. They then take effect in the legal system and their content cannot be amended or reappealed by law.[38]

4. Direct enforceability of fundamental rights

71. The Constitution of the Principality of Andorra not only contains a list of fundamental rights and freedoms and provides for their development in legislation, but also establishes that "the rights and freedoms recognized in chapters III and IV of this title (title II) are immediately binding on the public authorities and are directly enforceable. Their scope cannot be limited by law and is protected by the courts.

72. This provision should be noted since, even if little legislation developing fundamental rights has been enacted, it means that all the fundamental rights and freedoms contained in chapters III and IV of title II of the Constitution can be directly invoked before the authorities and the courts, whose role it is to protect them. The mechanism for direct application of the Constitution has functioned completely as expected, and court decisions have frequently made direct reference to constitutional precepts relating to fundamental rights.

5. Institutions responsible for ensuring the implementation of fundamental rights

73. In the Principality of Andorra, general oversight of the implementation of fundamental rights is entrusted to the courts. Nevertheless, in addition to the ordinary courts, two institutions are responsible for defending such rights.

74. The first of these institutions, the Raonador del Ciutadà - established by a law of 4 June 1998 and based on the Swedish and French ombudsmen - is an extrajudicial guarantee conceived of as a counselling and mediation service as a complement to judicial review of administrative acts. The role of the Raonador del Ciutadà is to defend and ensure respect for and implementation of the rights and freedoms enunciated in the Constitution, and he or she acts as a representative or agent of the Consell General. The Raonador del Ciutadà ensures that actions

by the public authorities respect the general principles of the defence and protection of the rights and freedoms established by the Constitution and objectively serves the general interest.[39] The Raonador del Ciutadà receives and investigates complaints from individuals regarding the workings of the authorities and can also act on his or her own initiative.

75. The second institution responsible for ensuring respect for fundamental rights and freedoms is the Tribunal Constitucional, through the remedy of empara (remedy of constitutional protection) provided for under the law. An ordinary action for empara is brought against judgements by an ordinary court in final instance for rejection or dismissal of priority and urgent proceedings for the protection of fundamental rights. The applicant or additional party to the proceedings in question has the right to lodge an appeal.[40]

76. There is also a special remedy of empara where vulnerability affects "the right to go before the court and to obtain a ruling founded in law based on the right to due process, with investigation by an impartial court established by law, the right to counsel and the assistance of a lawyer, to the presumption of innocence, to be informed of the charge, not to admit guilt, not to testify against oneself, and, in criminal proceedings, to appeal", and where the violation occurred during or in connection with judicial proceedings. In these circumstances only the Public Prosecutor's Office is empowered to lodge an appeal at the request of the party concerned.

77. Lastly, it is possible to make application for empara against rulings, decisions and acts of the Consell General which are unlawful and which would harm certain fundamental rights to which the Constitution gives special protection.

II. GENERAL MEASURES FOR THE PROTECTION OF CHILDREN

78. The traditional legal system of the Principality of Andorra is currently in transition with its adaptation to contemporary precepts embodied in the 1993 Constitution.

79. There is a broad social consensus and sensitivity regarding children, reflected in the many programmes for the country's children. These cultural and social programmes are independently carried out by the comuns, educational institutions and private entities.

80. The trend is towards specific activities during school vacations oriented towards education and occupation of leisure time.

81. In brief it may be stated that, despite a high degree of consensus, these activities offer only modest protection in reality and that there is a need for improved coordination.

82. Within the Ministry of Health and Welfare, a commission for children and young people, established in 1992 on the initiative of the Government, is responsible for oversight and monitoring of vulnerable children and for placing them with the competent services.

83. Adoption of the Constitution has led to greater awareness of individual rights and to greater involvement by the authorities in the development of those rights, which is certain to have a positive impact on society in general and on children in particular.

84. The following may be cited as an indication of this greater "legislative awareness" following the adoption of the Constitution: with regard to children, in 1993 the llei qualificada on education was enacted; and in 1995 the Principality ratified the Convention on the Rights of the Child, approved the law on adoption and other forms of protection of abandoned minors, and signed the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

A. Promotion of participation in and oversight of government policy by civil society

85. The Principality of Andorra has seen the emergence of an as yet imprecisely defined framework for social participation in a social context reflecting the physical propinquity of people and characterized by the appearance over the past five years of civil society organizations and associations seeking to take part in activities formally conducted by the authorities alone. The authorities and civil society are forming a new partnership in the assumption of these responsibilities, each with a specific role.

86. With regard to children, both organizations such as AINA (holiday camp organization) and Caritas as well as individuals with experience of activities for children have been consulted.

87. The Andorran National Committee for UNICEF, which suggested in 1994 to the Government and the comuns that they should sign the Convention on the Rights of the Child, has on several occasions attempted to forge closer links with the Government and indicated its willingness to participate on an advisory basis in the formulation of children's policies. As testimony to its interest in the promotion of the rights of the child in Andorra, in 1997 the National Committee for UNICEF organized a seminar on the preparation of this report, to which were invited teachers in the Principality as well as professionals and managers from the Ministry of Health and Welfare, which has responsibility for some children's policies as well as the preparation of this report.

88. The Government has indicated a desire to establish a youth department in the Ministry of Education, Youth and Sport, in order to promote associations for young people and establish environments offering contact between adolescents and young people and their immediate social environment. While it is the case that the integration of young people into Andorran society has taken place without difficulty, there is now a trend towards lifestyles with a lack of structure which places some adolescents and young people in vulnerable situations, including failure at school, which requires action to promote their reintegration. The Ministry of Health and Welfare is responding to such situations through its programme for integration into society and working life.

89. In October 1998 a seminar was organized for government officials by Caritas Andorra. Integration problems were discussed and proposals made; these will be made more specific in the near future.

90. The Ministry of the Interior, for its part, is seeking to initiate programmes that would offer an alternative to the detention of minors subject to judicial and administrative measures in the context of a new law - the llei qualificada concerning minors - which will establish a specific legal procedure for minors, clearly differentiated from that applicable to adults.

B. National and local machinery for the coordination of children's policy and implementation of the Convention

91. A number of mechanisms exist for the coordination of the various sociocultural and socio-health policies in the field of education and social welfare, but without there being a regulatory coordinating body. A degree of coordination exists between departments of the central administration (social services and education service) and local government departments on issues such as scholarships and the prevention of various illnesses, in implementing joint programmes to occupy children in their free time and cultural programmes (theatre, summer programme, etc.).

92. While it is true that the comuns have no responsibility at present for social services as such, they nevertheless organize activities in the comú, such as programmes of cultural and sports activities, leisure centres for the elderly, and health centres.

93. Mention should also be made, in the parish context, of the organization of day-care facilities: public (administered directly by the local authorities), private and partly subsidized by the central Government, such as the governing board of Notre Dame de Meritxell nursery.

94. The Government thus develops children's policies through various ministries, in accordance with their responsibilities. Thus the Ministry of Education, Youth and Sport has responsibility for education, and the Ministry of Health and Welfare oversees the health of the population, particularly that of children, through its School Health Service.

95. The Ministry of Health and Welfare is the body responsible for formulating and implementing government policy for the protection of children, as well as policy on legal and social protection. The Ministry of the Interior is responsible for implementing government policy concerning criminal justice as it relates to minors, and has sought the cooperation of the Ministry of Health and Welfare on the bill on juvenile crime, approval of which was due in the first half of 1999.

96. With the aim of establishing a framework for action and coordination of all social activities in Andorra, a national social services plan providing for programmes and consultation with other bodies was approved by the Government in December 1995; the plan describes various levels of action, with the focus on the basic level.

97. The plan, which reflects a desire to integrate services and define functions, includes the adoption of a regulation on social security benefits, approved by the Government on 20 November 1996. It also establishes a government system of social services with the focus on a basic care network and specialized care services with a view to ensuring the provision, as a

State responsibility, of essential social services, while guaranteeing access to such services for all those in need who have been resident in Andorra for more than three years. The plan takes into account the situation of children and their needs and, in article 5 (3), makes provision for assistance for children and young people (payment for day care and support for socialization and integration).

C. Early childhood services

98. Article 7 of the llei qualificada on education, approved by the Consell General in September 1993, states that primary and secondary education, lasting from 6 to 16 years of age, are compulsory. Article 7 (2) states that, from the age of 3, every child shall have the right to attend school if the parents or guardian so request. Notwithstanding the degree of latitude represented by the fact that compulsory schooling begins at the age of 6, the social norm is for parents to send their children to school from the age of 3 onwards.

99. In fact, many children under 3 years of age are sent to day-care centres as a result of their parents' work schedules. The large number of day-care centres, both private and public, induced the Government to draft a law on day-care centres in May 1995 and to adopt regulations thereon in November 1995. The proper functioning of the 17 day-care centres in the Principality in terms of social, educational and health issues is ensured by observance of these regulations. The centres have a total enrolment of 550 children, representing 23.3 per cent of children from 0 to 3 years of age (see annex).

D. Measures to increase awareness of the Convention among adults and children

100. It is a government obligation to society to promote awareness of and to disseminate the Convention. Thus far this has been done through two channels: publication in the Butlleti Oficial del Principat d'Andorra and the issuance of two publications - a leaflet and a booklet - by the Government in conjunction with the Andorran National Committee for UNICEF. As well private bodies such as Caritas and AINA have organized the dissemination of texts on human rights and the rights of the child through educational activities and the training of volunteers and leisure activity organisers.

101. In addition, in 1996 the Andorran National Committee for UNICEF sent copies, in Catalan, of the Convention on the Rights of the Child to every school in the country. In 1998 it launched a project aimed at adolescents from 12 to 15 years of age with a view to making them aware of global development and social justice issues and thus of the rights of the child.

E. International cooperation and solidarity with regard to children

102. In terms of international cooperation on behalf of children, attention should be drawn to the Government's many aid initiatives in cooperation with non-governmental organizations (NGOs), and to assistance provided by NGOs individually or jointly through the forum of NGOs working in Andorra.

103. NGOs - Andorran Red Cross, Enfants du Mékong, the National Committee for UNICEF, Mans Unides, Caritas Andorra, and Intermón, among others - provide support to international cooperation programmes in coordination with the Government or independently. They carry out mother and childcare programmes, set up schools and provide health services in various countries of Africa, Latin America, Central America and South-East Asia. Further details of some of the projects undertaken by these NGOs over the period 1996-1998 are given below.

1. Andorran Red Cross

104. The Andorran Red Cross built a primary school in the province of Las Esmeraldas in Ecuador, and in 1997 took in 33 children from 8 to 12 years of age from Chernobyl (Ukraine) to help them recover their health.

2. Enfants du Mékong

105. This NGO built 10 schools at Banmethuot and Pleichuet in central Viet Nam. It operates a sponsorship programme for children from the Mékong zone, putting them in contact with Andorran families that undertake to provide for their needs and offer them an opportunity to attend school in observance of their fundamental rights. There are now 130 such sponsorships.

3. National Committee for UNICEF

106. In 1996 the National Committee for UNICEF signed an agreement with a commercial hotel group in Andorra. All hotels and related establishments have been asked to provide financial assistance to UNICEF programmes for child victims of war living on the streets and victims of natural disasters.

107. In 1998 the National Committee for UNICEF began a project in cooperation with a thermal recreational spa in the principality - Caldea - to solicit funds for a programme undertaken by the municipality of Manzanillo in Cuba, the principal aim of which was to supply drinking water to various communities in the area. In this connection the Caldea spa has made contact, through UNICEF, with Andorran schools so that they can make use of its facilities at low cost. The project makes children in the Principality conscious of the problems of children in other countries.

4. Mans Unides

108. In 1995 this NGO established a centre for HIV-positive children. In 1996 it helped to build a drinking water supply system for a boarding school in Côte d'Ivoire. In 1997 it collaborated in the following projects:

Construction of two classrooms for street children in Nansongue (Togo);

Aid project for a foster home at Gitarama (Rwanda) for children who are war orphans;

Provision of equipment and food to a nursery school at Kigali (Rwanda) housing a significant percentage of HIV-positive children;

Enlargement of a school in a district of Bogotá (Colombia).

In 1998 it built four classrooms for 120 nursery school children in Santo Domingo (Dominican Republic).

5. Caritas Andorra

109. In 1996 Caritas carried out an exchange programme with 20 Turkish teenagers in a voluntary social service programme.

6. Intermón

110. Intermón carries out school education projects with a high pedagogical content on education for peace and intercultural education.

7. Cooperation through the comuns

111. Since 1997 the comú of Escaldes-Engordany has been twinned with Huaras, a Peruvian village, with which a cooperation agreement has been signed for the implementation of sociocultural and health projects (children's refectory and orphanage).

112. Since 1994 the comú of Escaldes-Engordany has had an exchange programme for children from Étang-Salé, Réunion.

113. Various schools in the country have exchange programmes with schools in other countries. In addition, an international body, in cooperation with the local Lyons organization, is helping to arrange exchanges between Andorran children and disadvantaged children in Spain and France, thus helping to make it possible for them to go to holiday camps and summer camps in other countries and encouraging their socialization.

III. DEFINITION OF THE CHILD

A. Age of majority

114. Andorrans acquire legal majority at 18 years of age.[41] Majority gives full civil capacity to act and full political rights (active and passive suffrage).[42] Nevertheless, from the age of 16 years onwards, minors may be considered as adults under criminal law, since from that age they are held responsible for offences and criminal violations and can thus be incarcerated.[43]

115. Several special measures exist for the protection of minors as do certain rights that minors can exercise themselves or with the consent of parents or guardians before they are 18. The salient aspects of the situation of minors are considered below.

B. Education

116. Education is compulsory and free from the ages of 6 to 16. Nevertheless, the law provides for free attendance at school from the age of 3 if parents or guardians so request, as well as an option of extending attendance to the age of 18 to complete secondary education.[44]

C. Employment of minors

Employment of minors

117. Minors under the age of 14 are prohibited from exercising any employment.[45] Between the ages of 14 and 16, minors may work only during school vacations up to a maximum of two months a year. They must, however, have at least two consecutive weeks of vacation in the summer and half of school vacations at other periods. The working day cannot exceed six hours, with a break of at least one hour a day and a weekly rest period of at least one and a half days.[46]

118. From the age of 16 on, minors may work, but their working day is limited to a maximum of eight hours, with a break of at least one hour and a weekly rest period of at least one and a half days.[47]

119. In all cases of employment of minors, the law specifies that the work must be light and must not harm the physical and emotional development of the minor.[48] The law prohibits night work and requires a minimum rest period of two hours between working days and a written contract of employment, which must be signed by the legal representative of the minor (parents or guardian).[49]

D. Consent to certain acts

120. Minors may marry from the age of 16 and may, from the age of 14, request a court dispensation to marry.[50]

121. From the age of 14, minors also have the capacity to make a will.[51] On attaining the age of 16, a minor born in the Principality of Andorra to foreign parents who are residents may make a personal election, with the authorization of his legal representatives, for Andorran nationality or for his or her nationality by ius sanguinis.[52]

122. In the event of annulment of marriage, separation or divorce, the judge must, wherever possible, seek the opinion of the minor child, when taking measures relating to his or her education and to custody.[53] Similarly, in case of adoption, the judge must hear the opinion of the minor, this being mandatory from the age of 10 and optional before that age. Once the minor attains the age of 12, his or her consent is necessary for agreement to adoption.[54]

123. The minimum age of sexual consent is 16. The Penal Code provides for prison sentences in the event of carnal relations with minors aged under 16, even where they were not subjected to violence or intimidation.[55]

124. The Penal Code defines as an offence carnal relations with minors aged under 18 where use was made of deceit, or abuse of authority or situation.[56]

E. Criminal responsibility, deprivation of liberty and imprisonment

125. As stated, the age of criminal responsibility is set at 16. Minors under 18 nevertheless benefit from a legal provision whereby the length of the prison sentence is half that normally incurred for the violation.[57]

126. From the age of 16, minors are subject to terms of imprisonment and may be incarcerated in prisons. Minors under that age have no criminal responsibility and are not subject to the penalties established under the Penal Code, and may not be incarcerated.[58] Legislation applicable to minors provides for re-education, correction and supervision.

127. This area was only lightly regulated in the old Code of Penal Procedure, abrogated on 7 January 1999. The Government is engaged in formulating a bill on juvenile crime, which will govern the application of disciplinary and educational measures to children over 12 but under 16 who have infringed criminal laws. The drafting of the bill takes into account article 40 of the Convention.

F. Consumption of alcohol

128. The consumption of alcoholic drinks in public establishments by minors under 16 is prohibited.[59]

IV. RESPECT FOR THE PRINCIPLES ENUNCIATED IN THE CONVENTION

129. In addition to the Convention on the Rights of the Child, the Principality of Andorra has acceded, on 3 January 1997, to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

A. Measures relating to the principle of non-discrimination (art. 2)

130. The Constitution of the Principality of Andorra embodies the principle of equality before the law and the prohibition of all discrimination on the basis of birth, race, sex, origin, religion, opinion or any other personal or social status.[60] This principle and this prohibition enjoy protection under the Penal Code, since "any act of discrimination constituting harassment or infringing the dignity of a person on the basis of origin, religion, race or sex shall be considered an offence".[61]

131. The Constitution also establishes the principle of equality before the law,[62] and this principle enjoys specific protection since it is directly binding on the public authorities as directly enforceable and is protected by the courts.[63]

132. The Administrative Code also guarantees equality before the public authorities and prohibits discrimination on the basis of birth, race, sex, religion, opinion or any other personal or social status.[64]

133. The constitutional principle of equality is also specifically reflected in legislative instruments approved subsequent to the Constitution, in particular the llei qualificada on marriage. Laws antecedent to the Constitution that were not fully in accord with it (for example the Law of Succession Reform Act of 31 July 1988) have been abrogated or amended, insofar as they were incompatible, by the direct application of the Constitution, without waiting for specific amendments, which, however, would be advisable.

134. With regard specifically to discrimination on the basis of sex, the Principality of Andorra has acceded to the Convention on the Elimination of All Forms of Discrimination against Women.[65]

B. Measures relating to the best interests of the child (art. 3)

135. The principle of the best interests of the child has been expressly incorporated in more recent legislative instruments: the llei qualificada on marriage, in which reference is made to measures to be taken in the event of annulment of marriage, separation or divorce;[66] and the llei qualificada on adoption and other forms of protection of abandoned minors. Nevertheless the very specific characteristics of Andorran civil law mean that the principle of the best interests of the child can be invoked before the courts, and in all proceedings which are not governed by specific regulations but which are governed by ordinary law.[67]

136. That being so, the most important measure in this area was introduced by the Public Prosecutor's Office Act, which, in order to guarantee the child's best interest, mandates intervention by the Public Prosecutor's Office in all civil proceedings involving minors.[68]

C. Measures relating to the right to life, survival and development (art. 6)

137. The Constitution of the Principality recognizes and guarantees the right to life[69] as well as the right to health protection.[70]

138. With regard to the right to education, which is a specially protected fundamental right, the Constitution states that education shall "foster the dignity and full development of the human personality, in respect for freedom and fundamental rights".[71]

D. Measures relating to respect for the views of the child (art. 12)

139. Article 33 of the Civil Marriage Act provides that, in proceedings for the annulment of marriage, separation or divorce, measures for the education and custody of children shall be taken, with due regard, where possible, for the views of minor children.

140. In case of adoption, the judge, should he or she deem it appropriate, may seek the opinion of children aged 10 or over. For adoption to become effective, the agreement of children over the age of 12 is required.[72]

141. In the school context, each school in the Andorran educational system has a school assembly, which is the collegial body for participation by various segments of the education community in the management of the institution. Two student representatives at each level of education, with the exception of nursery and primary schools, are members.[73]

V. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality

142. Strictly speaking, the Andorran State had no civil register until 1996: the register kept by the Catholic Church served that purpose. For this reason, children born to non-Catholic families were also included in it.

143. The Civil Registration Act of 11 July 1996 and associated regulations dated 18 December 1996 enabled an Andorran civil register of births, deaths and marriages to be established, thereby putting an end to an anachronistic situation.

144. The llei qualificada on nationality now in force confers Andorran nationality on children born in Andorra provided that one of the following conditions is met:

(a) At least one of the parents is Andorran;

(b) At least one of the parents was born in Andorra and has his or her principal and permanent residence there;

(c) At least one of the parents has, and has had for the 18 years prior to the birth of the child, his or her principal and permanent residence in Andorra.

145. If, at the time of birth, this period has not been completed, nationality is granted provisionally and must be confirmed once the period of residence has been completed by one of the parents. This confirmation confers nationality definitively.

146. In order to avoid statelessness, the law on nationality expressly stipulates that foundlings in Andorra or children born in the Principality to unknown parents are Andorran until parentage is established. The same applies to children born in Andorra to stateless or foreign parents not granted the nationality of one of the parents under the foreign legislation.[74]

147. The Civil Registration Act stipulates what has to be done to register a child immediately at birth and establishes the mandatory rules to be followed at that time. At the time of registration, the child's first name is given, followed by the father's and mother's surnames, in that order, although the order may be reversed at the joint request of the parents.[75] When parentage is not recorded, the registry official must give a first name and surnames to the person concerned, and must choose from the most common ones, avoiding any reference to the fact that the child has been abandoned.[76]

B. Preservation of identity

148. The Civil Registration Act not only guarantees the right to an identity but also its preservation, establishing formal procedures, under judicial supervision, for changing a first name or surnames. These procedures ensure the preservation of the child's legal personality.

149. The Penal Code, meanwhile, defines the illegal use of a child's personality or identity as an offence.[77]

C. Freedom of expression

150. The Constitution of the Principality of Andorra proclaims that freedom of expression is a fundamental right of every person. As legislation that can be directly invoked, it is directly binding on the authorities and is protected by the courts.[78]

151. In schools, the regulations on participation in school management in Andorra provide for participation in the school assembly of two pupil representatives per grade, except at the nursery and primary levels.

D. Access to information

152. The Andorran Constitution proclaims freedom of communication and information, as well as freedom of expression, as fundamental rights of every person. As legislation that can be directly invoked, it is directly binding on the authorities and is protected by the courts.[79]

153. In order to facilitate children's access to communication resources, public libraries - both national, run by the Government, and parish, run by the comuns - have special children's sections.

E. Freedom of thought, conscience and religion

154. Freedom of thought, conscience and religion are also fundamental rights recognized by the Constitution; they may be invoked directly and they enjoy the protection of the courts.[80] Article 11 establishes that this freedom "shall be subject only to such limitations as are prescribed by law and are necessary in the interests of public safety, order, health or morals, or for the protection of the fundamental rights and freedoms of others".

155. Given the strength of the Catholic tradition in Andorra, the Constitution makes a specific reference to the Catholic Church, guaranteeing it the "free and public exercise of its activities and the preservation of the relations of special cooperation with the State in accordance with the Andorran tradition".[81]

156. State schools in Andorra are secular, although there are voluntary religious lessons. The Principality also has Catholic schools and other secular schools (the French junior high schools and high school, which follow the French system, and the Spanish junior high schools and high school, which follow the Spanish system).

F. Freedom of association and of peaceful assembly

157. These freedoms are also fundamental rights proclaimed by the Constitution and guaranteed to all. They are directly binding on the authorities, are directly enforceable, and are protected by the courts.[82]

G. Protection of privacy and prohibition of torture and degrading treatment

158. The Andorran Constitution guarantees the right to privacy, honour and reputation and establishes that "all shall be protected by law against unlawful interference in their family and private life".[83]

159. The Constitution recognizes and guarantees the right to physical and moral integrity and stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".[84]

160. The death penalty is prohibited in Andorra.[85] The maximum period of imprisonment provided for by the Penal Code is 30 years, or 15 years in the case of minors under the age of 18.

161. The Constitution guarantees the rights to "liberty and security", and stipulates that people "shall only be deprived of them on such grounds and in accordance with such procedures as are established in the Constitution and the laws". The Constitution stipulates, in particular, that "police custody may not last longer than the time needed for the purposes of the investigation and may in no case last longer than 48 hours, at the end of which time the detainee must be brought before the judicial authorities". It also stipulates that the law will establish a procedure that allows every detainee to request a court to rule on the lawfulness of his or her detention. Details of this procedure, known as habeas corpus, are given in the transitional law on judicial procedure of 21 December 1993. The procedure may be invoked by "the actual person deprived of liberty or through a solicitor, even orally, by members of his or her family with no limit on the degree of relationship, by spouses or their equivalent, or by the legal representatives of the person deprived of liberty, as well as the Public Prosecutor's Office and any other court, batlle (lower-court judge), judge, or judicial or prison official".[86]

162. Currently, no legal norm requires that minors should be held separately in prisons. However, in practice, young people between the ages of 16 and 21 have always been separated from other prisoners. It is envisaged that a prisons bill currently being drafted will incorporate this measure and all the other recommendations contained in the Convention on the Rights of the Child.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Family environment

1. Legal framework for parental responsibility

163. Article 13 of the Andorran Constitution, in title II, chapter III, on the fundamental rights of the person, which, as legislation that can be directly invoked, is directly binding on the

authorities, stipulates that "the public authorities shall promote a policy of protection of the family, which is the basic foundation of society". It also stipulates that "both spouses have the same rights and duties", and that "all children are equal before the law, regardless of their parentage".

164. The latter provision is particularly important, as it directly abrogates quite a number of norms, under both ordinary law and other legislation, which discriminated against illegitimate children.

165. Moreover, the llei qualificada on marriage, which supplements the constitutional principles, stipulates that "men and women have the right to marry and start a family" and that "the family is the basic unit of society and is entitled to the economic, social and legal protection of society and the State".[87] This law also establishes the principle of equality between spouses, which was introduced into Andorran legislation by a decree dated 15 November 1975, which reads as follows: "Marriage confers the same rights on both spouses and requires them to fulfil the same duties", including "the obligation to support and raise their children, taking into account their children's desires and abilities, in accordance with the family's financial resources".[88] The law stipulates that no one can relinquish this obligation or duty.[89]

166. The law ascribes parental authority jointly to both parents, specifies that its purpose is to protect the child's safety, health and morals, and ascribes to them the right and duty to care for, watch over, maintain and educate the child, as well as to legally represent the child and administer the child's possessions.[90] The law does not authorize either the delegation or transfer of parental authority except by virtue of a court decision. It also provides for the removal of parental authority from "parents who, through ill-treatment, such as habitual drunkenness, manifest ill-conduct, criminality or failure to care for and educate the child, clearly jeopardize the child's safety, health or morals".[91]

167. Neither the annulment of a marriage, nor separation nor divorce exempts parents in any way from their obligations towards their children. The parent without custody of the children has visiting rights and is obliged to make a financial contribution, in accordance with his or her means, to the cost of the child's upkeep and education. Visiting rights may be restricted or suspended in the event of a serious breach of the duties imposed by a court decision or in very serious circumstances.[92]

168. The Penal Code strengthens the guarantees that these rights will be observed, laying down a prison sentence of up to eight months for anyone contravening or obstructing the court's decisions on the custody of children, their right to shelter, the exercise of visiting rights or the payment of maintenance.[93]

169. The father and mother are obliged, even if they do not have parental authority, to visit their minor children and support them by paying maintenance to cover the costs of all clothing and medical care. Maintenance also covers the children's education while they are minors and until they complete their education. The authorities, with the help of the social services, are constantly on the alert to ensure that this obligation is met, but are not always successful as fathers who have abandoned their families sometimes leave Andorra and the pursuit of claims for maintenance against them is no longer within Andorran jurisdiction.

170. The batlle (judge) takes appropriate measures to ensure that an allowance for maintenance is paid and that the child's needs are met if the parents do not meet this obligation.

171. The law on adoption and other forms of protection of abandoned minors has made it possible to standardize all measures for the protection of abandoned children, but some additions need to be made to expand and refine certain aspects of it.

2. Protection against neglect of parental duties

172. As has been said above, parental authority entails a number of obligations towards the child and is subject to limitations when it is not properly exercised in the child's interests. Thus, a judgement based on a failure to respect the child's rights may strip the father or mother of all or some of their authority. The Andorran courts may, for the benefit or in the interest of the child, restore parental authority once the reason for removing it no longer applies.

173. The Penal Code strengthens the guarantees for the exercise of these rights by making punishable the following kinds of behaviour:

(a) Under article 175 (title II, chapter IV), a person with custody and responsible for the protection of a minor and who neglects that minor, thereby jeopardizing the child's life or physical integrity, shall be punished with a prison term of up to four years;

(b) Under article 332 (title V, chapter III, "Offences against the family"), anyone ceasing to fulfil their duties to help and assist their minor or legally incompetent children or their ascendants or spouse in need shall be punished with a prison term of up to eight months. A guardian or custodian is liable to the same sentence for the same breaches of duty towards the minor or legally incompetent child in their care;

(c) Under article 323, anyone who violates or obstructs court decisions on the custody of minors, their right to shelter, the exercise of visiting rights or the payment of maintenance to family members risks a prison sentence of up to eight months;

(d) Under article 324, anyone who encourages or helps a minor to run away from home shall be punished with a prison sentence of up to six months;

(e) Under article 325, anyone usurping a child's legal personality or identity by passing off a child or making false statements or by any other means shall be punished with a prison sentence of up to one year.

3. Guardianship

174. Some foreign families living in Andorra for professional reasons may organize their living arrangements around the demands of their work and hand over responsibility for educating their children to their family in their country of origin. These situations, in which the parents and

children are not living together, do not come within the administrative and educational scope of the social services. It should also be observed that such situations are typical of countries with a large labour force employed in the tourist sector.

4. Physical and psychological recovery and social rehabilitation of child victims of abuse

175. The younger children are, the greater the effects of neglect and abuse are on their psychological and social development, because of their dependence on their family environment. Young children's mental faculties are just not sufficiently advanced to allow them to endure suffering alone. In order to adequately develop these faculties, children depend on their parents and on the family environment, and the younger the child is, the quicker he or she is able to overcome painful experiences, given suitable help.

176. This is why the Technical Commission for Children and Young People considers early detection of children at risk to be one of its highest priorities.

177. In its attempts to facilitate the early detection of children at risk, the Commission organized several meetings during the 1995/96 school year for schools and day-care centres in Andorra in order to make professionals aware of the problem and propose that they work together. Teachers were handed a document on risk indicators to help them spot and draw attention to any neglect or abuse.

178. The next step is to get in touch with the appropriate social worker to pass on comments on the case and, where necessary take a closer look at it. This work is already being carried out and every case brought to its attention is systematically evaluated by the Commission, which studies each case individually and proposes a tailored work programme for each child.

179. Each individual programme takes into account the means available to the family for modifying behaviour that compromises the child's development, and also the duration of that behaviour. The case study also includes an assessment of the family and of the child, which usually involves a psychological examination.

180. If the state of neglect or abuse of the child violates certain rights covered by the law on adoption and other forms of protection of abandoned minors, a report is submitted to the Batllia (court), which takes action to protect the child's well-being and safety.

181. Data collected between January 1996 and November 1997 indicate that 39 children had to be temporarily removed from their original family environment for their protection (see annex).

182. To help these children recover, they are sent to the Mental Health Centre, where they receive treatment and help adapted to their individual situation.

B. System for the protection of children and young people

1. Early detection and prevention

183. In the last five years, efforts in the Principality of Andorra have focused on setting up child protection services capable of preventing problems in families in difficult situations, detecting and remedying risk situations and dealing with social, family-related and psychosocial problems that might affect children.

184. The primary care social services, which are run by the local authorities in many countries, are provided by the Government in Andorra for historical reasons and because of the country's size.

185. The social services have specific departments for, among others, families, the disabled, older people, young people, and children and teenagers. The department for children will shortly be reorganized as an independent agency combining the various departments currently dealing with children and families.

186. The basic social services provide primary care for individuals and families. Social workers working at the local parish level intervene when a temporary problem arises that leaves a child unable to remain in his or her usual family circle, and house the child elsewhere, in a foster family or a home.

187. Helping families to live together is a service with obvious repercussions on the socialization of children, thanks in particular to the psychological and social help provided for the families.

188. Child protection in Andorra is very closely linked to the primary care social services and the informal social network that acts as a preventive mechanism. Nevertheless, it is now vital to coordinate and organize professional services supported by the authorities so that they have specific and verifiable targets.

189. With regard to the primary care services, the social services programme assigns two types of task to them:

(a) Action to solve the social problems of individuals, families and the community;

(b) The prevention and detection of situations of social risk or various shortcomings that affect the population in general and children in particular.

2. Family Mediation Service

190. On 13 April 1994 the Government set up the Family Mediation Service, the main function of which is to mediate when a couple splits up so as to avoid the negative effects of the separation and prevent or minimize the problems that might confront children after the separation.

191. The Service seeks to protect the interests of children suffering as a result of family disputes arising before, during or after the parents' separation, by improving communication between family members, avoiding pressure being put on the children, reaching amicable agreements, ensuring that the relationship between parents and children is maintained and, lastly, reducing the financial and social cost of separation.

C. Technical Commission for Children and Young People

192. All the existing administrative measures concerning children were analysed and collected in an official report on the childcare services in May 1997. This document resumes the current situation and contains proposals for future programmes for children.

193. The Technical Commission for Children and Young People is one of the family care programmes that is part of the first phase of the national social services programme. Its goal is to define and evaluate questions relating to abandoned children in the Principality of Andorra.

194. The Commission has raised awareness in schools in the various educational systems in the country and in public and private day-care centres, pointing out their responsibilities in the early detection of risk situations for children (1995) and producing a document on risk indicators and on what to do to bring such situations to the attention of the competent social services.

195. The Commission also assesses, monitors and examines the cases brought before it and submits a report to the judicial authorities in cases where the abandonment of the child is in breach of some of the provisions of the law on adoption and other forms of protection of abandoned minors.

1. Functions of the Commission

196. The functions of the Technical Commission for Children and Young People are as follows:

Deal with requests from the basic social services for an assessment of the situation of children abandoned by their families. The request should include: a report on the child's social and family situation; the reasons for requesting action; a psychological report on the child if deemed necessary; and a draft work programme to be carried out in conjunction with the child's family, which the Commission has to approve;

Examine carefully and in detail the action to be taken and decide whether to recommend separating the child from his or her biological family;

Give a reasoned argument for the action considered desirable;

The social worker concerned must then deliver the report containing the Commission's proposal to the judicial authority for approval of the most appropriate course of action;

If the action does not involve removing the child completely from home but changes the child's usual family relationship or includes measures affecting members of the child's family, also deliver a report containing the Commission's proposal to the judicial authority;

Specify the general goals for the child and the child's family, so that these goals can be taken into account when the work programme is being drawn up for teachers and/or the social services concerned. To do this, caseworkers will meet periodically to jointly prepare the work programme and ensure its follow-up;

Oversee the work programme, both in accordance with a schedule set by the Commission and at the request of one of its members;

Determine the expiry date for the action taken and thus the duration of the work programme;

Establish what preliminary action needs to be taken to prepare the child for the implementation of the course of action decided upon;

Give guidance on the main points of the contract between the child's parents and/or the child and the service assigned to take the action agreed upon;

Act, in general, as the oversight body for the Foster Care Service and the La Gavernera children's home;

Submit to the judicial authority a duly reasoned and justified proposal to end or modify the course of action followed;

If a course of action is unexpectedly ended, notify the judicial authority;

Cooperate with the various sections of the government Department of Social Services involved in the care of children and young people, whenever the professionals involved so request;

Collect information on children and young people from the various bodies working with this population group in Andorra;

Prepare summaries, studies, memoranda and statistics on all the cases assessed by the Commission in order to extract data on the state of society;

Promote both preventive action and solutions to help children and young people;

Oversee the post-institutional monitoring of children once a measure has been fully implemented in every case considered appropriate by the Commission.

2. Support at home and foster care, as decided upon by the Commission

197. Support at home. This refers to monitoring that takes place in the child's family and social environment so as not to separate the child from his or her family. It consists of providing personalized help to the child, with family involvement and preferably by making use of the common resources of the child's social circle.

198. All cases where risk has been detected are assessed by all the professionals concerned within the Technical Commission for Children and Young People. The Commission's social services draw up a comprehensive work programme to help the family take care of the child properly and identify the resources and services that should be involved, namely, the mental health-care services, social services, leisure services and so on.

199. This course of action includes checking that parents are fulfilling their duties of care and education.

200. The action is implemented by primary care social services workers, who draw up a draft work programme with the family while making the parents aware of their responsibility to help the child find his or her identity.

201. The social worker must report periodically on the child's situation and development.

202. Whenever circumstances so permit, support at home should be the preferred course of action so as to avoid the separation and emotional trauma involved for the child in any other measure.

203. No child should be separated from his or her family for financial reasons. This is why some element of the cost of implementing any measure other than support at home should be paid to the families of children with little money.

204. Foster care. In this case, children are entrusted to a person or family for a fixed period of time with the aim of returning them to their original families. This measure is always temporary, lasting until the children are reintegrated into their natural families and/or into society. One characteristic of foster care is that the children are not cut off from their families and it does not include pre-adoption homes.

205. The management of foster care is included in the Foster Care Service programme adopted on 25 June 1990.

206. In principle, the Foster Care Service is aimed at children from:

(a) Families with a very specific need that temporarily prevents them from taking care of their children;

(b) Families in which the duty of care, education and maintenance is neglected and in which the child receives no moral support or the necessary material assistance.

207. The Foster Care Service has the following goals:

To forestall difficulties for children at risk in their families;

To compensate for problems resulting from the absence or failure of parents when the child is at risk and a course of action has been decided upon by the judicial authority;

To draw attention to children at risk for whom the most appropriate course of action is likely to be placement in a foster family;

To watch over children placed in foster families and support the latter throughout the process;

To provide children with a stable family framework to help them develop, in cooperation with the natural parents. Foster care is seen as a way of helping parents so that, once the problems that made it necessary have been dealt with, they can once more take on their parental duties;

To introduce the child being placed in foster care to the foster family.

208. For the duration of the foster care, the primary care social worker cooperates with the child's original family to prepare for the child to be returned to it as quickly as possible, where that is possible.

209. Regular meetings are also held with the group of foster families, to give them guidance on adoption and developments in topics of concern to them, while at the same time there is a systematic follow-up of the foster children.

210. Foster care is most suitable for children under the age of three and for older, emotionally immature children, and it is preferable to a specialized home as it allows the child to live in a more stable setting than that provided by a children's home.

3. Specialized children's homes

211. Children removed from a family environment because they are at risk are protected by the State, which uses various alternatives to the family, including the La Gavernera children's home.

212. Children are admitted to the home when their circumstances and characteristics rule out the other measures described (support at home or foster care).

213. A child's stay in the home should always be temporary. It should never be considered a punishment or form of imprisonment, but as a place for learning social skills. Consequently, preparations for the child's departure from the home begin on the day of arrival.

214. A child with serious mental or physical problems may be admitted to a centre providing suitable care for as long as is necessary to treat the problem. The child is admitted to a centre outside Andorra, thanks to agreements between the Caixa Andorrana de Seguretat Social (Andorran Social Security Fund) and the centre concerned.

215. In order to avoid as far as possible the harmful effects of long-term institutionalization in the children's home, on the one hand, and the needless renewal of the temporary measures taken by the Government to protect the child, on the other, the Technical Commission for Children and Young People monitors the work programme drawn up to assess the progress of the child and the child's family and gradually adjusts the programme if need be.

216. For the purposes of this assessment, interdisciplinary meetings are held with all the professionals working on a case. When a child has been separated from his or her biological family, a tentative date is set for the end of the separation, and this helps keep the period of protection to the strict minimum.

217. Children are also monitored when they leave the government protection scheme, to help them become reintegrated into their families and society.

218. The Batllia periodically receives information on the situation and progress of these children, so that the judicial system can request any changes it finds necessary and/or more details on the children and/or their families.

4. La Gavernera children's home

219. The Technical Commission for Children and Young People may propose that children should be admitted to the La Gavernera children's home for full-time care and learning designed to reintegrate them into their families and to give them the care and education they need.

220. The La Gavernera children's home was opened on 2 May 1985, with the Government's agreement, to protect abandoned minors.

221. The La Gavernera home offers full-time residential care, provides an education and tries to offer a temporary solution for certain children who have been abandoned or who are in a situation of social risk until they can be reintegrated into their families or society.

222. Admission should always be a last resort and should not be granted unless no other measure is possible.

223. The Technical Commission for Children and Young People fixes the criteria for the admission and discharge of children and for the length of their stay in the home, and submits its proposal to the batlle (judge) for approval.

224. The home is run by the director and the teachers, who base their work on educational principles, liaising closely with the social worker in charge of the case and/or with other professionals, depending on the specific needs of each child.

225. The home is funded from the State's general budget.

226. The home, the only one of its kind, operates as:

(a) An emergency centre (stays of up to 48 hours): it meets the child's basic needs;

(b) A short-stay centre (1-3 months): it meets specific transitional needs and performs an essentially therapeutic and support function;

(c) A centre for medium- and long-term care: a personalized educational programme is prepared, giving priority to formal teaching;

(d) A day centre: a personalized educational programme is prepared which takes into account the timetable and length of stay of the child.

227. The La Gavernera home handles cases requiring urgent action, those in which a serious risk to the child's physical or mental well-being has been identified and those in which the child cannot be kept in his or her family environment because of the difficulty of the circumstances.

228. The general goals of the La Gavernera children's home are to:

Surround the child with affection, understanding and emotional and material security;

Meet the child's needs and educate the child;

Take care of the child's physical and emotional health while attending to the harmonious development of the individual;

Perform a support and guidance function for adolescents;

Establish and supervise a system for visits;

Help the Technical Commission for Children and Young People to achieve its main goal of returning children to their family environment or, if need be, encourage their integration into some other family environment (their extended family or a foster family) or prepare them for adult life.

229. The specific goals of the La Gavernera children's home are to:

Encourage the child to develop good habits of hygiene, health and tidiness;

Work to improve the child's results at school and/or work and generally encourage the child to take advantage of training;

Begin to involve the child in Andorran social and cultural life;

Work on the child's weak points by drawing up an individual educational programme.

230. The children staying temporarily at the La Gavernera children's home are up to 18 years of age and are:

(a) Children from families with serious problems (physical or mental ill-treatment, alcoholism, drug addiction, prostitution, parents suffering from chronic mental or physical illness);

(b) Children from broken homes, with problems that have negative repercussions on the children;

(c) Children who, for reasons unknown to the Commission, are unable to adapt to measures such as support at home or foster care;

(d) Emergency admissions;

(e) Children whose personal safety is at risk.

5. Adoption Service

231. Under Andorran law, adoption is always subject to a court decision, in accordance with the principle of the best interests of the child. The law requires a prior recommendation by the Adoption Service, which involves a preliminary study of the circumstances of adoption and an assessment of the suitability of the person or couple wishing to adopt, helps consolidate the trend whereby the law puts the interests of the child first, and provides guarantees against the trafficking or sale of children.

232. The Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption and the law on adoption and other forms of protection of abandoned minors, subsequently adopted by the Consell General on 21 March 1996, provide an ideal legal framework to ensure that both national and intercountry adoptions are carried out as a protective measure and in the best interests of the child.

VII. HEALTH AND WELFARE OF THE CHILD

A. Andorran health system

233. The Constitution of the Principality of Andorra recognizes the right to protection under a State-guaranteed social security system.

234. The health system is mixed: it is based on the social security system and consists of all facilities and services relating to hygiene, public health and individual and collective health care - these fall directly under the general administration and are placed under its management. The funding and the supply of services are mixed in the sense that the users participate in the financing, and both independent professionals and publicly employed professionals and public and private institutions provide services in public and private establishments.

235. The health-care and hygiene functions are assigned between the general administration and the management bodies as follows:

(a) The Government is responsible for developing and programming all health sectors and for implementation in regard to public health and hygiene;

(b) The Caixa Andorrana de Seguritat Social (CASS) is responsible for collecting insured persons' contributions and financing the health services used by beneficiaries;

(c) The Andorran Health Care Service (SAAS) is responsible for running government-funded health services, in addition to its duties as stipulated in the law creating SAAS.

236. Accordingly, the health system in Andorra is run by the State and falls under the regulatory authority of the Government, which guarantees the system so that all citizens enjoy the best possible health facilities.

1. Membership in CASS

237. Membership in CASS is compulsory for all wage earners. Other persons may become voluntary members. Disabled persons may obtain health insurance through a disability pension, and elderly persons not in receipt of other pensions may obtain a non-contributory old age pension. These are granted and financed by the Government, which pays the contributions to CASS in proportion to the number of retirees. Approximately 80 per cent of the population is now covered by insurance.

238. The sickness scheme is administered by CASS as a single system, without any distinction between the various groups of insured persons, regardless of occupation or type of membership. The sickness scheme must ensure a financial balance between revenue, exclusively from contributions, and payments for health services and other benefits. Employers and workers contribute a specific percentage of salary (10 per cent in 1998, i.e. 7 per cent by the employer and 3 per cent by the wage earner). Voluntary contributors pay CASS 10 per cent of their average declared salary. The contribution for retirees is 3 per cent of their pension.

239. Health services are not provided directly by the social security system. The system engages professionals or institutions through general or special agreements. In addition, the State has concluded or is in the process of concluding international social security agreements with Spain, France and Portugal. The sickness scheme plays an important role in financing health care, but it covers only about a quarter of health service expenditures. For this reason, many people need supplementary insurance with private companies.

2. Supply of services

240. Services are supplied by dispensaries and, in the case of hospitalization, by professionals at public and private centres. All the professions involved are regulated and may be exercised under the public or private system. The private system is termed "liberal practice", and

comprises independent professionals. They can, as appropriate, work in public establishments, such as hospitals. It may therefore be said that the supply of health services is mixed, i.e. both public and private.

3. Health and welfare coverage for children in Andorra

241. Within applicable limits, the mother and child care scheme covers 90 per cent of costs. There are arrangements to cover 100 per cent in special situations where the cost of care is disproportionate to the insured person's income.

242. Costs are covered when care is provided by professionals in establishments or services which have concluded agreements with Andorra or neighbouring countries.

243. An agreement between the Caixa Andorrana de Seguritat Social (CASS) and speech therapists has been signed in order to provide care, with a medical prescription, for children who experience speech difficulties. In 1997, 145 children up to 18 years of age received attention for such difficulties.

244. CASS also provides the following benefits: allowances for orphans up to 18 years of age (150 children in 1997) and children hospitalized outside Andorra and covered by CASS (6 children in 1997).

245. All children may benefit from health coverage through parents contributing as wage earners or voluntary members.

246. There is a legal vacuum in regard to children whose parents have lost their jobs. Twenty-five days after losing his or her job, a wage earner no longer benefits from social security and, consequently, neither do his or her children.

247. All children in foster care regulated by the social services benefit from the health coverage of one of the adults in the foster family. Children at the La Gavernera home benefit from health coverage administered by the social services.

248. Persons insured by CASS and uninsured persons have a wide range of services which they can use directly, on their own initiative. Access to a general practitioner or specialist is free. People may also choose the hospital at which they want to be treated, in accordance with agreements concluded. In addition to the services available in Andorra, insured persons also have access on the same terms to services which have concluded agreements with the public systems in Spain, France and Portugal.

249. Doctors in Andorra may also refer their patients to such services.

B. Andorran Health Care Service (SAAS)

250. SAAS is a semi-public body established under the General Health Act; it was created on 23 December 1986 by agreement with the Consell General. Its task is to manage and administer all public health resources - human, material and financial - both in the hospital and primary-care sectors.

251. The responsibilities of SAAS in the health system are to develop and implement health promotion activities and programmes.

1. School Health Service

252. The School Health Service was established by a decree of the Consell General on 29 September 1980 as the Serve Sanitari Social Escolar.

253. Although it has kept its original basic objectives, the School Health Service has undergone changes, particularly with regard to social objectives, which are dealt with more directly by the primary-care social services.

254. The fundamental objectives of the Servei de Salut Escolar are to:

Systematically monitor the health of children in school at various stages;

Carry out additional medical examinations at the request of teachers or families;

Take preventive measures against tuberculosis and other contagious diseases in the school environment and, where appropriate, the family environment;

Take preventive measures against oral and dental disease and sensory or functional deficiencies;

Identify children with medical and social deficiencies and contribute to the health education of pupils and their families;

Ensure overall hygiene in schools;

Ensure, where necessary, a school social service;

Ensure the proper implementation of the programme for the systematic vaccination of children.

2. Child vaccination programme

255. Systematic vaccination of children has proved to be effective in eradicating various infectious diseases. In April 1988 the Government decreed the first systematic child vaccination programme in Andorra together with a vaccination schedule; this was a very important step forward in providing all health professionals with a common objective and working tool.

256. In the light of epidemiological and health considerations, the resources available and the objectives already achieved, the vaccination schedule has been reviewed and modified. Specific objectives and activities have been periodically defined, with a view to eradicating infectious diseases that can be prevented by proper immunization, from the standpoint of achieving the goal for 2000 established by the World Health Organization.

257. The overall objectives of the vaccination programme are the following:

To avoid the consequences of preventable diseases;

To prevent epidemics of preventable diseases;

To obtain the best possible coverage of the child population, in other words, make sure that the largest possible number of children living in Andorra are protected against diseases that can be prevented by vaccination.

258. As to triple vaccine coverage, it should be noted that until the first vaccination programme began in 1988, this vaccine was neither compulsory nor well known among the population at large.

259. In 1997, a total of 506 high school pupils were vaccinated, compared with 611 junior high school pupils.

3. Monitoring vaccination of children in day-care centres

260. The School Health Service systematically monitors the vaccination of children in day-care centres, pursuant to article 2 (3) of the regulations on day-care centres (rules for health protection and disease prevention, Children's Day-Care Centres Act, adopted on 11 May 1995).

261. The goal is to make sure that all children in day-care centres are properly immunized in accordance with the official vaccination schedule in Andorra.

4. Tuberculosis examination and prevention programme

262. This programme, run by the Information and Study Service of the Ministry of Health, is carried out in cooperation with the Servei de Salut Escolar.

263. The overall aim of this programme is to help cut down the incidence of tuberculosis in Andorra.

264. The programme is also designed to develop follow-up activities in the event of tuberculosis infection at school and to conduct health education and preventive activities to improve the standard of chemoprophylactic treatment of children.

265. Priority has been given to teachers and school-age children.

5. Consulta Jove: a service for promoting responsible sexuality among young people and adolescents

266. Changes in the sexual behaviour of the young and the fact that they make little use of the health services available to them mean that they can be regarded as a group at risk, with such consequences as unwanted pregnancy and a high incidence of sexually transmitted diseases, such as AIDS. Problems may also arise - physical or mental or social - that may hinder full development of their health.

267. This led in 1993 to the establishment of a special service for young people and adolescents known as Consulta Jove, as part of the Health Centres Network. It is fully funded by the Andorran Health Care Service and the Ministry of Health and Welfare.

268. Consulta Jove has the following aims:

To provide responses for young people;

To provide reliable information on affectivity and sexuality;

To reduce the number of unwanted pregnancies among adolescent girls;

To prevent sexually transmitted diseases and AIDS;

To facilitate access to health care and to foster the adolescent's integration and his relationship with the adult world.

269. Consulta Jove's activities are conducted either with individuals or groups, in the form of workshops held at schools and on Consulta Jove premises.

270. Activities with individuals involve providing targeted information in response to any doubt young people may express and taking the requisite measures, where appropriate, to carry out pregnancy tests and provide health education and information on the various health services.

271. Young people are welcomed individually at Consulta Jove, as couples or in groups, and are received confidentially and free of charge.

6. Mother and Child Programme (MCP)

272. To improve care for mothers and newborn children, the Mother and Child Programme (MCP) was introduced in 1993 by the Andorran Health Care Service, in cooperation with the Health Centres Network.

273. The team consists of a midwife working with hospital midwives.

274. The main objective of MCP is to attend to women whose pregnancy involves risk, to provide home care for the mother and follow-up for the newborn child.

275. The MCP midwife regularly visits all primiparous women on the eve of their return home. Women who are giving birth for the second time or who already have children are also visited in accordance with established criteria, at the express request of the woman, her gynaecologist or the hospital midwife, or whenever deemed necessary.

276. The MCP midwife then makes one or more visits to the family home or the parish health centre. In the course of these visits follow-up is provided for the mother and child relating in particular to feeding the child, hygienic feeding conditions, accommodation and environment, in order to detect possible problems and lessen the anxiety of first-time mothers.

277. An appointment is then made for the mother with the baby for other follow-up visits, which are held at the local health centre. The baby undergoes a basic neonatal examination, and his or her weight and size are recorded.

278. Care for women with a pregnancy involving risk is provided by gynaecologists, the primary-care social services or other services, which refer them to the MCP midwife. The number of visits necessary in each case is then determined. The chief problems encountered are those of mothers suffering from hypertension or diabetes, with a likelihood of premature birth or multiple pregnancy.

279. In 1997, 153 first visits were made (69 per cent primiparous women and 31 per cent second-time pregnancies or women with more than one child).

7. Hospital paediatric service

280. A paediatrician visits newborn children with no symptoms of disease on the first day and on the day of departure. On the third day, an early metabolites detection test is performed. The number of babies born in 1997 was 697.

281. For outpatient paediatric consultations, the Andorran Health Care Service has a paediatric consultant and specialists in paediatric pneumology, gastroenterology, endocrinology, nephrology and neonatal pathology. SAAS provides paediatric care for children under 14 years of age.

8. Mental health service

282. Besides the child protection services provided by the children's home and the Foster Care Service, there is a hospital mental health service which provides psychotherapy (family psychotherapy, individual treatment for children and/or adults, alcohol detoxification treatment, etc.) which is available to all children and families.

9. Other programmes

283. There are also various programmes to facilitate social integration: out-of-school activities for the very young; and a social and occupational integration programme for adolescents at risk and for those failing at school, most of whom belong to unstructured families. The programme responds to needs identified by the primary-care social services.

284. Home care is provided in cases where the family stands in need of professional assistance to restore its internal functioning.

C. Programmes at the Nostra Senyora de Meritxell special school for disabled children

285. While these programmes are also of an educational nature, they have been included in the section on health and welfare because the integration into school and into society of children at this school make for a general improvement in their health and that of their families.

286. A bill on the protection of the rights of disabled adults and children is now being prepared.

287. The Escola especialitzada Nostra Senyora de Meritxell (Our Lady of Meritxell special school) started in 1972 with the task of promoting the teaching, education and rehabilitation of all disabled or disadvantaged children who cannot follow or continue their education at the same pace as other children.

288. The Meritxell special school looks out for the future of children who have reached adolescence, and as far as possible, their vocational training and integration into society.

289. To perform this task, the Meritxell school has gradually broadened its activities to meet its pupils' needs and provide appropriate services for the disabled, from birth to adulthood. This reflects the changes in philosophy and attitude that have emerged in recent years regarding care for the disabled. The new philosophy lays emphasis on the quality of life and at the same time acknowledges that the quest for happiness and health is a basic human aspiration.

290. Further, the llei qualificada on education adopted in 1993 establishes in its article 8 that the education of pupils with special educational needs is to be governed by the principle of integration.

291. At the present time the programmes and services, offered by the Meritxell school which have gradually been developed in accordance with these principles, go beyond a narrow school focus.

292. The Meritxell school is the only establishment supported by employers to be given a legal personality in terms of its budget and its own staff.

1. Health coverage for disabled children

293. Disabled children receive health coverage through a contribution paid partly by the Our Lady of Meritxell special school (90 per cent) and partly by the family (10 per cent).

294. Very low income families may apply for 100 per cent health coverage, which is granted in most cases. If the need lasts for some time, the family may apply to the government social services for financial assistance.

295. Any disabled child who, on attaining the age of majority, can work as an integrated member of society receives health coverage as someone covered by social security. In addition, the Our Lady of Meritxell special school is financed by public funds through two ministries: the Ministry of Health and Welfare (the Xeridell and Agentas programmes as programmes for integration into society and working life; the Impuls programme and Albó residence in the socio-health sphere) and the Ministry of Education, Youth and Sport (Edes, Progrés and Trànsit education projects)

2. Impuls programme

296. "Early" action means care and education for children from birth up to school age. In the early years of life the child learns in the family. However, excessive dependence on this type of learning can lead to diminished opportunities for interaction and development of the child and to difficulties for both the parents and the child.

297. The application of an individualized programme, family consciousness-raising and training, the quest for a suitable social environment and coordination of all these factors are the main challenges faced by the Impuls early action programme of the Our Lady of Meritxell special school. Nine children are now covered by this programme.

3. Progrés programme

298. The Progrés special education programme is concerned with all school-age children unable to participate in a school curriculum even with support, in view of their mental backwardness, behaviour or motor difficulties. Entering in this programme, as in the case of other programmes, in no sense means a final decision. Ongoing evaluation means the child can be followed and, where possible, placed in a more suitable programme.

299. At the present time, the Progrés programme covers two groups of pupils. Nevertheless, it is very difficult to form homogenous groups, and the differences in the levels and pathologies of the pupils often mean that subsequent work programmes cannot be applied systematically.

300. Groups of pupils receiving special education include six children with very different but serious problems, ranging in age from 3 1/2 to 14. Individual support is also provided for 45 children.

4. Supported schooling programme

301. In schools, the principle of integration means above all that children with problems have the right to learn and to be educated in an environment that has the fewest possible constraints.

302. The conditions for entering the supported schooling programme vary, depending on the children's experience, the gradual acceptance of problem children by other children and teachers in the regular schools, and the availability of support facilities.

303. New pupils at the school are placed in one or other of these programmes, depending on their age and level. Thus, all age levels from 3 to 13, with the exception of the children who are most affected, enter a supported schooling programme.

5. Tràsit programme

304. This is a guidance and training programme for disabled persons in the transition to adult life and is intended for children aged 12 to 16.

305. The Tràsit programme is intended to make the transition to adult life, and particularly from school to work, as flexible and autonomous as possible. Children must be prepared as early as possible, before 15 years of age, during the period of compulsory secondary schooling, which runs from 12 to 16.

306. Under this programme pupils acquire social skills, education of the mind and the emotions, sex education and also practical and functional academic knowledge.

307. Tràsit also offers a bookbinding and carpentry workshop, activities which appear to provide suitable conditions for training in a number of work skills.

308. Moreover, Tràsit pupils can attend packaging and silk-screen printing workshops. Apart from these in-house workshops, the school is in search of external training periods in the following: gardening, agriculture, natural resources, distribution and porterage services, household services, administration and secretarial work, health, manufacturing and mechanics.

6. Xeridell programme

309. The school has workshops for silk-screen printing, packaging and carwashing. The overall aim is to provide adolescents with a framework functioning as a pre-workshop, continuous occupation, and diversified work suited to their abilities. In all, 24 adolescents were in this programme in 1997.

7. Agentas programme

310. Agentas is an employment agency that finds jobs in companies in Andorra for disabled persons aged 18 years and upwards.

311. The structure of Agentas is similar to that of Xeridell, but children on the programme are placed with companies by an agent who liaises between pupils and firms. This makes for close cooperation between the private sector and the Our Lady of Meritxell special school. The programme is widely accepted socially.

8. Albó residence

312. Albó, a socio-health residence, was opened in 1995 to provide accommodation for disabled people who, because of their problems and family situation, cannot live with the family. It is a large residential establishment with a sports area and it has a special teaching team for residents' daily activities.

313. The Our Lady of Meritxell special school also has a research and training programme, a physical education and sports service, a physiotherapy service and a language service.

314. The total number of pupils in the Meritxell special school is 134 and the number of persons living in the Albó residence stands at 21.

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Andorran education system

315. The legislative framework for education in Andorra consists of the 1993 Constitution, the llei qualificada on education, the law on development of the Andorran education system and the agreements on education.

316. Article 20 of the Constitution states that "everyone has the right to education, which shall foster the dignity and full development of the human personality, in respect for freedom and fundamental rights".

317. The Constitution also establishes freedom of education and freedom to create educational institutions. It acknowledges the right of parents to choose the type of education for their children and the right, for their children, to a moral or religious education in keeping with their own convictions.

318. The 1993 llei qualificada on education does not simply reproduce the rights set out in the Constitution. It goes much further and establishes the education system on the basis of the situation in Andorra, namely the coexistence of different education systems within one and the same education structure - an enriching characteristic.

319. The purposes of education as set out in the law are essentially the development of the pupil's personality, a universal critical mind, independent behaviour, integration, social and civic participation and a contribution to enriching the cultural development of Andorran society. The law stipulates that education should promote subtle and rich use of the country's language, the acquisition of intellectual rigour and the transmission of scientific, technical, humanist, artistic and ethical knowledge.

320. The llei qualificada specifies that education must train children and young people to respect diversity, rights and freedoms, and to practise tolerance. The law stipulates free compulsory schooling from 6 to 16 years of age and establishes that all children have the right to schooling from the age of 3. It guarantees the right of adults to basic training, the principle of equal access to higher levels of education, freedom of expression for teachers and the rights of parents and pupils.

321. The law also defines public and private establishments and stipulates that French and Spanish educational institutions falling under the French and Spanish administrations (Sant Ermengol junior high school and the Sagrada Familia schools) must be regulated by an agreement with the Andorran Government.

322. To that end, as it was preparing the llei qualificada on education, the Government signed agreements with both Spain and France on teaching in Andorra: the Hispano-Andorran Convention on Education, signed on 11 January 1993, and the Franco-Andorran Convention, signed on 19 March 1993. They affirm the readiness of Spain and France to continue to contribute to a public service in Andorra through quality education - Spanish or French - with respect for Andorra's identity. The two education systems are governed by the legislation in force in the respective States and by the agreements signed with the Andorran Government.

323. These conventions provide for the recognition and accreditation of studies and of the diplomas issued by the administration concerned.

324. The law on development of the Andorran education system, adopted in June 1994, is another llei qualificada on education which defines and regulates the general framework for education in Andorra.

325. The main aims of this law are to affirm and develop the Andorran education system as the mainstay of education in Andorra and set out the Government's responsibilities in regard to education, namely, to draw up curricula, plan investments, evaluate the education system, regulate and administer the rights and duties of staff, award academic diplomas, prepare tables of equivalency, and deal with any matter pertaining to the law.

326. This law also places special emphasis on a knowledge of several languages and on an open attitude to universal culture, the integration of pupils with special needs, the participation of all sectors of the education community and the requisite coordination and collaboration between the Andorran education system and the systems in the neighbouring countries. The law defines the conditions and characteristics of the Andorran education system as well as the levels of education (nursery schools, basic schooling, baccalaureate, vocational training, higher education, ongoing adult education, Andorran training and special education).

327. One of the features of the Andorran education system is the attention paid to language issues. In this connection, it should be emphasized that Andorran schools are multilingual.

328. With regard to special education, the law provides for an agreement, which was signed in December 1995, with the governing board of the Our Lady of Meritxell special school. The Government has thus adopted and incorporated in the Andorran education system two programmes in the Meritxell special school: Progrés (supported schooling programme from nursery school to primary education) and Tràsit (supported schooling programme for secondary education and occupational training and the transition to adult life).

B. Overall aims of education

329. Andorra has a plural education system, consisting of establishments that follow the Andorran system and establishments that follow the Spanish and French systems, which are recognized through agreements. Each of these systems follows the programme and the curricula established by the Ministry of Education of the country concerned.

330. Under the legislation on education, the main aims of the Andorran system are the following:

To foster the personal development of pupils in the special framework of Andorra's culture and identity;

To help promote and enrich the cultural elements specific to Andorra's society by endeavouring to respond satisfactorily to its needs and thus allow pupils to acquire the requisite ability to become active members of Andorran society and agents for cultural creation and change;

To ensure in secondary education that the increasingly active participation of pupils in the process of cultural change and creation is a priority aim and therefore forms part of curricula by paying special attention to development of the capacity for social action and integration;

To make sure that, on the basis of more scientific and technological reasoning, students at the baccalaureate level are in a position to critically evaluate the development of humanity and society and reject any kind of discriminatory attitude or conduct;

To foster as a first language (the fundamental instrument of culture) the country's official language and to set the priority objective of a full command and proper use by pupils of oral and written Catalan;

To act as an open system mindful of the fact that its contribution to the development of pupils cannot be made in terms of exclusiveness. For this reason, the aim is to establish and develop relations with other cultural and educational institutions in Andorra and to coordinate educational activity with them;

To encourage a universal view among pupils and, to that end, pay special attention to the acquisition of knowledge which, by its nature and universality, is indispensable to lucid development in the world today and constitutes the basis for acquiring further knowledge;

To act as an open system that does not favour Andorra's specificities and identity by excluding or opposing other national or cultural identities but, on the contrary, maintains close ties with them while ensuring harmonious integration of specific, different elements with shared, universal elements as an ideal in educating pupils;

To establish and foster coordination with the education systems that exist in the country and form part of Andorra's educational structure;

To ensure, by the end of compulsory education, that pupils have gained a proper command of Catalan, French and Spanish and a knowledge of a fourth language (English);

To operate as an active system, with activities that are a systematic and planned aid in the process of building and acquiring knowledge in the course of the pupil's personal development;

To place individualized education at the core of its methodology. From this standpoint, one of the basic aims is for all pupils to achieve the goals set out in curricula by suitable planning of pedagogical assistance;

To supplement diversified teaching in secondary education by introducing optional subjects which, without prejudice to the principle of varied and inclusive education, allow the diversity of interests, motivations and abilities of the pupils to be satisfied more fully;

To regard itself as a system that favours integration, in the sense that it clearly rejects the standard education/special education dichotomy, in the belief that the special educational difficulties experienced by some pupils in embarking on the standard curriculum should be overcome by adapting teaching to those needs.

331. Andorra's education system is organized, as stipulated by law, in levels and school cycles. For each level there is a curriculum which provides specific information on the purposes of school education, on what pupils must learn and on what they must be taught. The curriculum also contains proposals and suggestions regarding the pedagogical approach to be followed to attain those objectives.

332. The French education system is based on the principles established in French law, essentially those defined in the Education Act of July 1989 and subsequent decrees, which set out the major education policies. French law defines education as a national priority and sets a 10-year objective for a recognized level of education for all pupils, with 80 per cent of them at the baccalaureate level.

333. The aims of the French education system, which, according to the Education Act (arts. 1 and 4) "is designed and organized in terms of the pupils and students", are as follows:

Each young person should gradually build on his or her learning;

Each young person should achieve a recognized level (vocational certificate at least);

Four pupils out of five should reach the baccalaureate level;

Everyone with a baccalaureate or the equivalent should, when he or she so requests, be allowed to continue with higher studies;

Education should be open, in terms of method and content, to international cooperation and the construction of Europe.

334. The Spanish education system is currently being reformed through the application of the Organizational Act on the Education System (LOGSE) of October 1990. This law provides for extended, compulsory and free basic education up to 16 years of age and the reorganization of the various levels in the Spanish education system, for which it establishes new aims.

335. The main aim of the Act is to ensure high-calibre education by modernization of educational institutions, enhancement of the status of teachers and participation by all constituent elements of the education community. It emphasizes the qualifications and training of teaching personnel, guidance, programming, innovation and educational methods, academic and vocational guidance and mechanisms for inspection and evaluation of the system. The implementation of the Act signifies, without any doubt, a re-examination of teaching and the internal reorganization of schools. The Act defines the educational path to be followed and establishes the abilities to be developed by the pupil at every stage.

336. The aims of the Spanish education system are as follows:

Full development of the pupil's personality;

Instruction in respect for fundamental rights and freedoms, the practice of tolerance and freedom and the democratic principles of coexistence;

The acquisition of intellectual and working habits as well as scientific, technical, humanist, historical and aesthetic knowledge;

The acquisition of qualifications to engage in a professional activity;

Instruction in respect for Spain's linguistic and cultural plurality;

Preparation for participation in social and cultural life;

Instruction in peace, cooperation and solidarity among peoples.

337. Designed under the education policies of Spain and France respectively, the Spanish and French education systems are integrated in Andorra's through agreements signed with those two countries, and particularly through the provisions on the study of the Catalan language, history, geography and Andorra's institutions, which are the foundation of the country's identity.

338. The three education systems are reciprocally approved, which makes for easy access to higher education in Andorra, Spain or France for pupils with one of the three baccalaureates.

339. As to financing, the Government meets all the cost of the schools in the Andorran education system and all the cost of religious schools in the Spanish system. Public expenditures on education accounted for 15 per cent of the national budget for the 1997 financial year.

340. Moreover, the contribution by the neighbouring countries, essentially with regard to the cost of teaching personnel, has to be borne in mind. Accordingly, the investment in education is even higher.

C. Education support and school services

341. The Ministry of Education, Youth and Sport has a number of services which perform their duties in the Andorran education system in accordance with the terms established by law: the Education Inspection and Evaluation Service, the Guidance and Educational Psychology Service and the Teaching Training, Educational Innovation and Research and Resources Service.

342. It should also be emphasized that, in addition to a broad choice of education, children in Andorra have an entire range of school aids and services at their disposal.

1. School Transport Service

343. This Service comes under regulations approved in 1993 by the Government and parents' associations. Transport is provided every day for more than 4,000 pupils at all the country's schools. The Service also provides transport for cultural and sports activities in the Principality.

2. School Skiing Service

344. This Service comes under regulations dating from 1993 which establish that skiing is an integral part of physical education in curricula at Andorran educational institutions.

345. Skiing is compulsory during the second term of the school year for all students in primary education and optional for all those in secondary education. Where necessary, the Service provides the requisite equipment for pupils on demand. This physical exercise, carried out in cooperation with ski resorts and schools, is engaged in by more than 6,000 pupils. The Service also offers pupils, during the first and third terms of the school year, without any obligation, an opportunity to do ice skating or swimming, activities carried out by a thousand pupils in basic education institutions.

346. The school services are all free of charge for pupils living in the Principality. A modest contribution is required of families for activities that are regarded as extracurricular, namely, transport, canteen and the ski pass. Parents with difficulties in meeting the cost of out-of-school activities may apply to the appropriate services.

347. Since the entry into force of the Scholarships and Study Credits Act, adopted by Consell General in November 1992, the Pupils' and Students' Aid Service has given scholarships and has defrayed the costs of out-of-school services for pupils in need, from nursery school to the baccalaureate level. Scholarships are also given to students in vocational training and in the first and second year of university, in the light of their performance. Study credits are also given to final-year undergraduate and postgraduate students at university. Pursuant to the Act, the Government publishes the scales and amounts granted. It is also possible to apply for a second scholarship, which is incompatible with a study credit, in an amount that varies depending on need, the studies involved and the results obtained. These scholarships cover the costs of registration, accommodation and materials.

3. Measures to encourage regular school attendance

348. It is worth pointing out that there is no school absenteeism in Andorra, thanks to important formal and informal checks, helped by the fact that the country is quite small.

349. With reference to formal checks during compulsory education, school headmasters report cases of absenteeism to the Ministry of Education, Youth and Sport. Through the government services and, where necessary, with the cooperation of NGOs, an individual follow-up is designed to provide a suitable solution.

350. In March 1997 the Government established a commission to implement the llei qualificada on education in regard to school absenteeism. The commission is headed by the Ministry of Education, Youth and Sport. The Ministry of the Interior and the Ministry of Health and Welfare are represented on the commission, with a representative of the education system involved.

IX. EDUCATIONAL GUIDANCE

A. Educational guidance in the Andorran education system

351. Every school has an information and guidance facility for pupils, with full and up-to-date documentation on training and occupations. The educational psychologist responsible for guidance participates, in close cooperation with the teacher, in preparing and producing the pupil's personal plan and helping him or her in his or her choice. The documentation is essentially from specialized Spanish and French organizations. All pupils, regardless of level, may consult this information when they so wish, or at times agreed upon with the educational psychologist. Information days for pupils are held with the participation of former pupils, and pupils can also take part in education assemblies, open houses, and conferences organized by Catalan, Spanish or French universities.

352. The educational psychologist, in individual interviews with pupils and parents, provides suitable information tailored to the specific circumstances of each pupil or student.

B. Educational guidance in the French education system

353. At the nursery school and primary school levels, the class teachers are responsible for guidance. In junior high and high schools, there is one teacher per group or class, the "main teacher", who attends to the group or individual.

354. Each school has an information and guidance centre. The centres have full and up-to-date documentation on academic training and on occupations. Psychologist counsellors take part in preparing and producing personal plans for students.

355. The documentation comes from the French National Information Office on Education and Occupations.

356. The material is in both printed and audio-visual form. Pupils may also take part in information days, education round tables and conferences organized by the French universities of Perpignan and Toulouse.

357. The psychologist counsellor organizes class talks on guidance. The most commonly used material for collecting information are the guidance forms filled in by the pupils and their families.

C. Educational guidance in the Spanish education system

358. At the nursery and primary school levels, teachers are responsible for guiding their pupils. In secondary education and at the baccalaureate level, there is a system whereby the teacher is given responsibility for groups of classes. Over and above a particular number of class groups, schools consider establishing a guidance department using a counsellor with training in educational psychology.

359. The counsellor's duties are to structure, plan, support and coordinate guidance. There is no educational psychologist exclusively for secondary education, but in the second year of high school a teacher with psychological training advises class guidance tutors.

360. Information meetings are held with former pupils. Pupils take part in teaching round tables and days set aside for guidance.

361. At the end of compulsory basic education, young people in Andorra have three options, depending on the courses followed, their own potential and their aims for the future: to pursue their studies up to the baccalaureate level, to learn a trade through vocational training or move directly into the labour market. The option chosen by the pupil generally depends on his schooling and the educational guidance he has received.

X. VOCATIONAL TRAINING

362. The Vocational Training Act, adopted in August 1996, seeks, through apprenticeship, to ensure high calibre vocational training to meet present and future challenges in the various sectors of the economy and to open up the way for young persons when they think about their future. Vocational training makes for a better balance of the needs of the labour market and the qualifications of young people.

363. There are two ways to obtain vocational training: training in the school environment, which is traditional in Andorra, and apprenticeship with a firm, developed in cooperation with Andorra's Chamber of Commerce, Industry and Services.

364. The National Vocational Training Commission now coordinates the types of training chosen: they must complement one another and be suited to the country's socio-economic needs, for the purpose of better incorporation in the labour market.

365. Vocational training in schools provides different choices and levels, depending on the education system.

366. The Andorran Education System offers computer training at the Andorran Computer School and training for sports technicians at the Training School for Sports and Mountain Professions. In the business environment, students can follow courses on the car trade, the hotel trade (waiters) and commerce (sales) at the Apprentices' Training Centre.

367. The French education system offers the following choices: management (in French), electrical engineering and hotel trade, all at the Comtes de Foix High School.

368. The Spanish education system provides training in administration (in Catalan) at the Janer junior high school.

XI. LEISURE AND CULTURAL ACTIVITIES

A. Cultural Activities Service of the Ministry of Education, Youth and Sport

369. In the course of the school year this Service organizes a number of activities for all pupils in the Principality schools. The activities, which are always conducted in the context of a common educational project for the country's children, are carried out essentially in Catalan and usually involve theatre performances, singing or music. At the same time, literary meetings are held with Catalan, French or Spanish writers in order for Andorran schoolchildren to gain a better acquaintance with the literary works they are studying.

370. A wide range of activities is available: photography, poetry or research competitions arranged by European institutions, or exhibitions of paintings, theatre performances and mathematics competitions arranged by the Ministries of Education of France and Spain through their embassies.

B. Cultural activities by the comuns

371. The llei qualificada on the transfer of budgetary resources to the comuns, adopted on 4 May 1993, stipulates (title II, art. 7) that each comú may assign up to 15 per cent of the amount transferred to finance sports, cultural, social and leisure activities. The comuns organize the following: communal nursery schools in three parishes, libraries, children's playgrounds, community centres, holiday crèches, out-of-school sports activities, games libraries.

372. The comuns play a significant role in organizing out-of-school activities, both cultural and leisure activities, and especially artistic, notably musical, studies, as well as leisure activities during school holidays. Besides initiatives by the Government and the comuns, private institutions, banks and foundations offer a wide range of cultural activities for young children and teenagers.

373. Out-of-school activities involve workshops and schools with the emphasis on culture and sport. They include arts schools, theatre workshops, workshops on the country's traditions and culture, and football, tennis and swimming.

374. Information on cultural and sports activities organized by the comuns is contained in the annex. There is also information relating to public day-care centres, libraries for adults and children, and the latest activities for teenagers and young people, these being gradually taken over by the parishes.

375. Sports facilities are quite sizeable and are to be found in all the parishes: sports centres, swimming pools, playing fields, etc.

376. In addition to their assistance to pupils and families in need of special support, NGOs in Andorra have recently collaborated in providing teacher training, school equipment and support at school for pupils from families with social difficulties and integration problems.

C. Cultural and educational activities organized by the private sector

377. These activities are conducted by private bodies - day-care facilities (see the annex for the number of children in private day-care centres and the geographical breakdown), holiday and summer camps, school support classes, etc. They are organized by local NGOs, such as AINA, Causes Pies (Massana church), GeL (an organization for young people subsidized by the local authorities of Sant Julià de Lòria) and Caritas, which works both locally and nationally and provides school support for the children of poor families that have recently come to live in the Principality.

378. The popular Canillo camps started in 1970, filling the gap left by the closure of the camps previously organized by the Consell General. In 1979, the International Year of the Child, the project to establish AINA (a holiday camp organization with an acronym for the International Year of the Child in Andorra) started up with the financial backing of the comuns and the Government. AINA has been very much in the lead in promoting the rights of the child in Andorra.

379. Every summer, AINA offers summer camp programmes in which 96 children from 7 to 11 and 48 adolescents from 12 to 14 have taken part, together with two other camps with 20 teenagers from 15 to 17. Throughout the year, AINA also provides ongoing training for its junior guides and ski instructors aged 15 to 17.

380. AINA's aims are to work for the country, to foster community life among children and young people throughout the country, to promote sport, particularly trekking and cross-country skiing, and to awaken creativeness through workshops and evening activities.

381. Another of AINA's aims is to foster community life among the team of guides and instructors, consisting of trained young people and adolescents from all the schools and leisure centres in Andorra.

XII. EDUCATION IN CONSUMERISM

382. The Andorran Consumer Association, established in 1994, publishes a monthly information bulletin for consumers. Articles have appeared in two bulletins on the use of toys, safety rules and sexism. The Association has also taken part in various media events on these issues, particularly at Christmas. In 1998 the Association made a number of televised appeals.

XIII. SPECIAL PROTECTION MEASURES

A. Administration of juvenile justice

383. The Andorran Penal Code, in force since 1 September 1990, has set the age of criminal responsibility at 16 (art. 19), an age previously considered as one at which someone could not be charged. Article 22 of the Code establishes that minors who have committed a criminal violation shall be brought before the Tribunal de Corts.

384. The batlles, the Tribunal de Corts and the Tribunal Superior de la Justícia all exercise jurisdiction. A special batlle for issues relating to children and the family is to be appointed shortly.

385. Until the publication on 7 January 1999 of the new Code of Penal Procedure, there was a procedure (arts. 302 to 306) whereby the Tribunal de Corts could, for lesser offences, delegate its jurisdiction over minors to the Tribunal de Batlles, which, without publicity and informally, brought together the Public Prosecutor's Office and a lawyer, listened to the child, heard the evidence, and ordered re-education or supervision measures, in the light more of the child's intellectual, mental and social development than of the offence committed. The orders could be appealed in a higher court.

386. Article 273 of the present Code of Penal Procedure establishes that "the procedure for judging minors shall be regulated by the corresponding special laws".

387. The draft of the llei qualificada concerning minors will regulate the guarantees under the Constitution and the provisions of article 40 of the Convention on the Rights of the Child, which deals not only with matters relating to protection but also with concrete educational, corrective and coercive measures applicable to minors who have committed an offence.

388. Until the law is adopted and pursuant to the criminal law in force, a minor under 16 years of age cannot be imprisoned. Furthermore, the Penal Code establishes (arts. 23 and 53) mitigating circumstances regarding criminal responsibility when the guilty person is 21 or 18 years of age, since his or her physical, emotional and intellectual maturity would not render him or her responsible, and provides for sentencing designed to prevent contact with offenders if the sentence involves imprisonment (for example a suspended sentence subject to such conditions as work, not going out at night or not frequenting certain public places).

B. Death penalty

389. Article 8 of the Constitution expressly prohibits the death penalty and torture or cruel, inhuman or degrading treatment or punishment. It will be noted that, previously, the death penalty was not included in the Penal Code and it was therefore impossible to apply it, since it had not been defined in accordance with legal principles.

390. Life imprisonment does not exist, and the maximum term for a serious offence is 30 years.

C. Exploitation and sexual abuse

391. The Penal Code specifies cases in which the rights of children are prejudiced or infringed. These legal precepts, designed essentially to protect a minor, are:

(a) Abandonment (art. 175);

(b) Corruption (arts. 112 et seq.);

(c) Exploitation (art. 320);

(d) Custody, supervision and maintenance payments (art. 323).

392. Under article 164 of the Penal Code, offences relating to drug trafficking and use and to sexual behaviour, especially when the victim is a minor, involve a maximum term of imprisonment of 10 years.

393. The sentence is heavier when the trafficking or selling of drugs, even in small quantities, involves minors under the age of 18 or legally incompetent persons or when dealing in drugs takes place in establishments frequented by minors. In the case of larger quantities of drugs, the term of imprisonment may be for up to 20 years.

394. Under articles 214 and 215 of the Penal Code, a maximum term of imprisonment of 10 years is imposed on persons who encourage, facilitate or foster the prostitution of minors or benefit from any form of prostitution.

395. Articles 204 et seq. of the Penal Code stipulate that sexual offences, when committed against minors under 14 years of age, constitute offences irrespective of the consent of the minor. Protection is also afforded minors aged 14 to 16, and the penalty is heavier in the case of ascendants. Furthermore, the courts may deprive parents of their parental authority or guardianship.

396. Article 213 of the Penal Code describes, in paragraph 1, the offence of pornography in general terms and, in paragraph 2, stipulates that the offence is aggravated when it is committed against minors. The article does not specify either the means of communication or the methods whereby the offence is committed and, consequently, does not rule out electronic networks.

D. Sale, trafficking and abduction of children

397. The Penal Code punishes the sale, trafficking and abduction of children and also specifies that simulated pregnancy and usurpation of the identity of a child are offences (art. 325).

398. To date, there is no case law on such offences.

E. Children and justice: offences committed in Andorra

399. The data for the period since 1994 show that, although the problem of juvenile delinquency does exist in the Principality, the offences committed are not, by and large, of the same importance nor do they cause the same concern as in other countries. A significant increase in this kind of offence is, however, to be noted.

400. In the 1996-1997 judicial year, a total of 1,606 criminal cases were brought, including 16 (i.e. 1 per cent) in courts for minors.

401. In these 16 cases, 32 persons were charged (i.e. 2.7 per cent).

402. The offences committed were chiefly offences against the individual and against property.

403. In the 1997-1998 judicial year, criminal cases totalled 1,714, including 23 (i.e. 1.3 per cent) in courts for minors.

404. In these 23 cases, 46 persons were charged (i.e. 3.5 per cent).

405. The figures show an increase in the number of offences against individuals and against the general interest, whereas offences against property remain the same.

F. Children belonging to ethnic minorities

406. Despite the quite particular structure of Andorra's population, which has four major nationalities (Spanish, Andorran, French and Portuguese), the number of children belonging to ethnic minorities is negligible. There are two or three gypsy families in the country and their cultural integration poses no problems.

407. Nevertheless, it is worth pointing to the cultural characteristics of children from Moroccan families or from families that have experienced a twofold process of immigration, as in the case of Angolans.

408. These children receive the same treatment as do other children and there is no special programme of affirmative action for them, either in schools or in the social context.

409. The teachers in the various education systems have received training in cultural diversity:

(a) In 1997, in the teacher training summer school organized by the Ministry of Education, Youth and Sport, a training programme on intercultural relations was organized, sponsored by the Andorran Committee for UNICEF in collaboration with the Andorran National Commission for UNESCO;

(b) Seminars for teachers in the various education systems were held on questions such as cultural diversity, cultural mediation and conflict resolution.

410. The training courses, like the seminars, were well received by teachers, who expressed a wish for them to be continued.

Notes

[1] Constitution, art. 85, and llei qualificada on the judicial system, arts. 1 and 2.

[2] Llei qualificada on the judicial system, arts. 20-22.

[3] Ibid., art. 93.2.

[4] Ibid., arts. 47 and 48.

[5] Ibid., arts. 52 and 53.

[6] Ibid., arts. 56 and 57.

[7] Preamble and art. 1 of the Public Prosecutor's Office Act of 12 December 1996.

[8] Constitution, arts. 95-103.

[9] Ibid., art. 39.1.

[10] Ibid., art. 8.1.

[11] Ibid., art. 8.2

[12] Ibid., art. 8.3.

[13] Ibid., art. 9.

[14] Ibid., art. 10.1.

[15] Ibid., art. 10.2.

[16] Ibid., art. 11.

[17] Ibid., art. 12.

[18] Ibid., art. 14.

[19] Ibid., art. 15.

[20] Ibid., art. 16.

[21] Ibid., art. 17.

[22] Ibid., art. 18.

[23] Ibid., art. 19.

[24] Ibid., art. 20.1.

[25] Ibid., art. 20.2.

[26] Ibid., art. 20.3.

[27] Ibid., art. 21.

[28] Ibid., art. 23.

[29] Ibid., art. 24.

[30] Ibid., art. 25.

[31] Ibid., art. 26.

[32] Instituted under article 41.1 of the Constitution and governed by articles 15 and 18 of the transitional law on judicial procedure of 21 December 1993.

[33] Constitution, art. 102.

[34] Ibid., title IX.

[35] Published in the Butlletí del Consell General (Bulletin of the Consell General), No. 11/98, 12 May 1998.

[36] Constitution, art. 5.

[37] Ibid, art. 64.1 (d).

[38] Ibid., art. 3.4.

[39] Llei qualificada on the Tribunal Constitucional, arts. 1 and 2.

[40] Ibid., arts. 86 and 87.

[41] Law on age of majority and political rights, 7 September 1995, art. 1.

[42] Constitution art. 24, and llei qualificada on the electoral and referendum systems, 3 September 1993 arts. 1 and 15.

[43] Penal Code, art. 19.1.

[44] Llei qualificada on education, 3 September 1993, art. 7.

[45] Labour regulations, art. 31.

[46] Ibid., art. 32.

[47] Ibid., art. 33.

[48] Ibid., arts. 32 and 33.

[49] Ibid., art. 34.

[50] Llei qualificada on marriage, 30 June 1995, arts. 18 and 20.

[51] This is a matter governed by ordinary law, as amended by constitutional principles (author's view).

[52] Llei qualificada on nationality, art. 34.

[53] Llei qualificada on marriage, art. 53.

[54] Llei qualificada on adodption and other forms of protection of abandoned minors, arts. 9 and 17.

[55] Penal Code, arts. 204, 205, 206, and 209.

[56] Ibid., arts. 207 and 208.

[57] Ibid., art. 53.

[58] Ibid., art. 19.

[59] Decree of Viguiers, 12 December 1990, art. 1.

[60] Constitution, art. 6.

[61] Penal Code, art. 313.

[62] Constitution, art. 13.1.

[63] Ibid., art. 39.1.

[64] Administrative Code, art. 21.

[65] Instrument of accession of 28 October 1996.

[66] Explicitly in articles 53 and 56, implicitly in the remaining articles.

[67] Andorra does not have a normative body of civil law but, rather, is essentially governed by ordinary law, which judicial doctrine has defined as that law resulting from the integration of Roman and canon law, but not in the sense of a full and exact application of those two corpora juris, but as a new body of law, of which the principal base is the written reason of Roman law, modified by the greater equity of canon law, in accordance with indigenous law as amended by custom (transcription of the reasons in a decision by an appeals judge, 8 July 1954, cited in several subsequent judgements).

[68] Public Prosecutor's Office Act, 12 December 1996, art. 3, para. 10.

[69] Constitution, art. 8.

[70] Ibid., art. 30.

[71] ibid., art. 20.1.

[72] Llei qualificada on adoption and other forms of protection of abandoned minors, arts. 9 and 17.

[73] Regulations on participation in school management in Andorra, arts. 8 and 9.

[74] Arts. 4 and 5.

[75] Arts. 57-63.

[76] Arts. 64-67.

[77] Art. 325.

[78] Penal Code, art. 12.

[79] Constitution, art. 12.

[80] Ibid., art. 11.

[81] Ibid., art. 11.3.

[82] Ibid., arts. 16 and 17.

[83] Ibid., art. 14.

[84] Ibid., art. 8.2.

[85] Ibid., art. 8.3.

[86] Penal Code, art. 7.

[87] Art. 1.

[88] Art. 10.

[89] Art. 1.1.

[90] Llei qualificada on adoption and other forms of protection of abandoned minors, arts. 27 and 28.

[91] Ibid., art. 38.

[92] Llei qualificada on marriage, arts. 52 and 54.

[93] Ibid, art. 323.

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